LEGISLATURE OF NEBRASKA

NINETY-SIXTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 797

Introduced by Dierks, 40

Read first time January 20, 1999

Committee: Health and Human Services

A BILL

FOR AN ACT relating to public health and welfare; to amend sections 20-313, 20-322, 27-504, 28-402, 28-409, 28-413, 28-415, 28-417, 28-418, 28-425, 28-427, 28-432, 28-433, 28-437, 28-438, 28-440 to 28-442, 28-444, 28-1438.01, 37-1254.01, 37-1254.07, 48-232, 48-1102, 48-1902, 71-101.01, 71-105, 71-107, 71-111, 71-112, 71-112.03, 71-113, 71-114, 71-115.01, 71-116, 71-117 to 71-120, 71-122 to 71-124.01, 71-128, 71-129, 71-131, 71-132, 71-138 to 71-140, 71-143, 71-144, 71-150, 71-153, 71-156, 71-161.02 to 71-161.04, 71-161.07, 71-161.09, 71-161.12 to 71-161.15, 71-161.17, 71-161.19, 71-161.20, 71-168.01, 71-170, 71-171.01, 71-1,143, 71-1,144.01, 71-1,144.03, 71-144.04, 71-1,145, 71-1,147 to 71-1,147.02, 71-1,147.06, 71-1,147.07, 71-1,147.09 to 71-1,147.11, 71-1,147.13, 71-1,147.14, 71-1,147.22 to 71-1,147.26, 71-1,147.28, 71-1,147.30 to 71-1,147.36, 71-1,147.52, 71-2404, 71-2405, 71-2407 to 71-2410, 71-2412 to 71-2417, 71-2501, 71-2506, 71-2509,

71-5401, 71-5408, 71-6045, 71-7405, 71-7412, 71-7415, 71-7419 to 71-7420, 71-7424, 71-7426, 77-4301, 79-267, 79-296, and 81-687, Reissue Revised Statutes of Nebraska, and sections 28-401, 28-405 to 28-408, 28-410 to 28-412, 28-414, 28-416, 28-428, 28-431, 28-1437, 71-101, 71-108, 71-110, 71-121, 71-121.01, 71-141, 71-147, 71-148, 71-151, 71-155, 71-155.01, 71-161.10, 71-162, 71-168, 71-168.02, 71-171.02, 71-1,142, 71-1,147.03, 71-1,147.08, 71-1,147.39, 71-1,147.40, 71-1,147.48, 71-1,147.50, 71-1,147.51, 71-1,147.53 to 71-1,147.57, 71-1,147.59, 71-1536, 71-2023, 71-2024, 71-5403, 71-6721, and 71-7416, Revised Statutes Supplement, 1998; to change and eliminate provisions relating to controlled substances, health care examining boards, emergency drug boxes, drug product selection, wholesale drug distributor licensing, and drug and poison labeling; to change provisions relating to the scope of practice and regulation of pharmacies and pharmacists; to change provisions relating to drug dispensing; to provide and change penalties; to change fees; to create a board; to provide powers and duties; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal sections 28-403, 28-419 to 28-424, 28-439, 28-1438, 28-1438.01, 71-1,144.02, 71-1,145.01, 71-1,146, 71-1,147.04, 71-1,147.05, 71-1,147.15 to 71-1,147.21, 71-1,147.27, 71-1,147.29, 71-1,147.37, 71-1,147.38, 71-1,147.47, 71-2401 to 71-2403, 71-2502 to 71-2505, 71-2507, 71-2508, 71-2510 to 71-2512, 71-5401, 71-5402,

71-5405 to 71-5407, 71-7402 to 71-7408, 71-7410, 71-7411, and 71-7413, Reissue Revised Statutes of Nebraska, and sections 28-401, 71-1,147.41 to 71-1,147.46, 71-1,147.49, 71-1,147.58, 71-1,147.60, 71-1,147.61, 71-5404, 71-7409, and 71-7418, Revised Statutes Supplement, 1998.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 20-313, Reissue Revised Statutes of Nebraska, is amended to read:

20-313. Handicap shall mean, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment.

Handicap shall not include current, illegal use of or addiction to a controlled substance as defined in section ~~28-401~~ 15 of this act.

Sec. 2. Section 20-322, Reissue Revised Statutes of Nebraska, is amended to read:

20-322. (1) Nothing in the Nebraska Fair Housing Act shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preferences to such persons unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status, or sex.

(2) Nothing in the act shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(3) Nothing in the act shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason or for no reason or to change tenants in his or her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home.

(4)(a) Nothing in the act shall limit the applicability of any reasonable local restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in the act regarding familial status shall apply with respect to housing for older persons.

(b) For purposes of this subsection, housing for older persons shall mean housing:

(i) Provided under any state program that the commission determines is specifically designed and operated to assist elderly persons as defined in the program;

(ii) Intended for and solely occupied by persons sixty-two years of age or older; or

(iii) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subdivision, the commission shall develop regulations which require at least the following factors:

(A) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important

housing opportunities for older persons;

(B) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(C) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(i) Persons residing in the housing as of September 6, 1991, who do not meet the age requirements of subdivision (b)(ii) or (iii) of this subsection if succeeding occupants of the housing meet the age requirements; or

(ii) Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements.

(5) Nothing in the act shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section ~~28-401~~ 15 of this act.

Sec. 3. Section 27-504, Reissue Revised Statutes of Nebraska, is amended to read:

27-504. (1) As used in this rule:

(a) A patient is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his or her physical, mental, or emotional condition;

(b) A physician is (i) a person authorized to practice medicine in any state or nation or who is reasonably believed by

the patient so to be or (ii) a person licensed as a psychologist under the laws of any state or nation who devotes all or a part of his or her time to the practice of psychology;

(c) A client is a person who consults or is interviewed by a professional counselor for professional counseling as defined in section 71-1,310;

(d) A professional counselor is a person certified as a professional counselor pursuant to sections 71-1,310, 71-1,324 to 71-1,328, and 71-1,333; and

(e) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of (i) the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family, or (ii) the client participating in professional counseling by a professional counselor.

(2)(a) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his or her physical, mental, or emotional condition among himself or herself, his or her physician, or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(b) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made during counseling between himself or herself, his or her professional counselor, or persons who are participating

in the counseling under the direction of the professional counselor, including members of the client's family.

(3) The privilege may be claimed by the patient or client, by his or her guardian or conservator, or by the personal representative of a deceased patient or client. The person who was the physician or professional counselor may claim the privilege but only on behalf of the patient or client. His or her authority so to do is presumed in the absence of evidence to the contrary.

(4)(a) There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for physical, mental, or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization or if a professional counselor deems it necessary to refer a client to determine if there is need for hospitalization.

(b) If the judge orders an examination of the physical, mental, or emotional condition of the patient, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) There is no privilege under this rule as to communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(d) There is no privilege under this rule in any judicial

proceedings under the Nebraska Juvenile Code regarding injuries to children, incompetents, or disabled persons or in any criminal prosecution involving injury to any such person or the willful failure to report any such injuries.

(e) There is no privilege under this rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in ~~section 28-401~~ the Uniform Controlled Substances Act shall apply.

Sec. 4. Section 28-438, Reissue Revised Statutes of Nebraska, is amended to read:

~~28-438.~~ ~~This article~~ Sections 28-401 to 28-447 and sections 4 to 74 and 100 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 5. For purposes of the Uniform Controlled Substances Act, unless the context otherwise requires, the definitions found in sections 6 to 73 of this act shall be used.

Sec. 6. Administer shall have the same meaning as defined in section 174 of this act.

Sec. 7. Agent shall mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, packager, or practitioner. Agent shall not include a common or contract carrier, public warehouse keeper, or employee of the carrier or warehouse keeper.

Sec. 8. Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to

testosterone, that promotes muscle growth, other than estrogens, progestins, and corticosteroids, and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the United States Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision.

Sec. 9. Automated pharmacy systems shall have the same meaning as defined in section 178 of this act.

Sec. 10. Board shall mean the Board of Pharmacy.

Sec. 11. Chart order shall have the same meaning as defined in section 187 of this act.

Sec. 12. Collaborative practice shall have the meaning as defined in section 188 of this act.

Sec. 13. Collaborative practice of pharmacy shall have the same meaning as defined in section 189 of this act.

Sec. 14. Controlled premises shall mean (1) places where persons registered or exempted from registration requirements under the Uniform Controlled Substances Act are required to keep records and (2) places, including factories, warehouses, establishments, and conveyances, where persons registered or exempted from registration under the act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

Sec. 15. Controlled substance shall mean a drug, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance not listed in Schedules I to V of section 28-405 if such substance may, under the Federal Food, Drug, and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a medical order.

Sec. 16. Controlled substance analogue shall mean (1) a substance of which the chemical structure is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (2) a substance which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. Controlled substance analogue shall not include: (a) A controlled substance; (b) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.; (c) any substance for which there is an approved new drug application; or (d) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent conduct with respect to such substance is pursuant to such exemption.

Sec. 17. Cooperating individual shall mean any person, other than a law enforcement officer, who acts on behalf of, at the

request of, or as an agent for a law enforcement agency for the purposes of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act.

Sec. 18. Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, packager, or dispenser other than the person or persons who in fact manufactured, distributed, packaged, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, packager, or dispenser.

Sec. 19. DEA number shall mean the unique provider number assigned by the Drug Enforcement Administration of the United States Department of Justice to a person authorized to manufacture, distribute, prescribe, and dispense controlled substances.

Sec. 20. Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Sec. 21. Dentist shall mean an individual licensed by the state to engage in the practice of dentistry pursuant to section 71-183.

Sec. 22. Department shall mean the Department of Health and Human Services Regulation and Licensure.

Sec. 23. Detoxification treatment shall mean the

dispensing pursuant to a chart order, for a period of time specified as short-term detoxification treatment or long-term detoxification treatment, of a narcotic drug or drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. Short-term detoxification treatment is for a period not in excess of thirty days. Long-term detoxification treatment is for a period of greater than thirty days but not in excess of one hundred eighty days.

Sec. 24. Dispense or dispensing shall have the same meaning as defined in section 198 of this act.

Sec. 25. Dispensing incident to practice shall have the same meaning as defined in section 199 of this act.

Sec. 26. Distribute shall have the same meaning as defined in section 200 of this act.

Sec. 27. Distributor shall have the same meaning as defined in section 201 of this act.

Sec. 28. Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act.

Sec. 29. Drug shall have the same meaning as defined in section 203 of this act.

Sec. 30. Drug paraphernalia shall mean all equipment, products, and materials of any kind which are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled

substance without a medical order authorizing such use. Drug paraphernalia shall include, but not be limited to, the following:

(1) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(2) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(3) Hypodermic syringes, needles, and other objects used, intended for use, and designed for use in parenterally injecting controlled substances into the human body; and

(4) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, cocaine derivatives, methamphetamine, hashish, or hashish oil into the human body, which shall include but not be limited to the following:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, ice pipes, or chillers;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons, spoons used for cocaine or

methamphetamine, and cocaine or methamphetamine vials;

(g) Chillums; and

(h) Bongs.

Sec. 31. Electromagnetic transmission shall have the same meaning as defined in section 206 of this act.

Sec. 32. Emergency medical service shall have the definition found in section 71-5172.

Sec. 33. Exceptionally hazardous drug shall mean (1) a narcotic drug; (2) thiophene analog of phencyclidine; (3) phencyclidine; (4) amobarbital; (5) secobarbital; or (6) pentobarbital.

Sec. 34. Facility shall have the same meaning as defined in section 211 of this act.

Sec. 35. Hashish or concentrated cannabis shall mean (1) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (2) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

Sec. 36. Healing art shall have the same meaning as defined in section 71-101.01.

Sec. 37. Hospice shall have the same meaning as defined in section 71-7802.

Sec. 38. Hospital shall mean a public or private institution licensed pursuant to sections 71-2017.01 to 71-2029.

Sec. 39. Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would

lead a reasonable person to believe that the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance.

Sec. 40. Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

Sec. 41. Law enforcement officer shall have the same meaning as defined in section 81-1401.

Sec. 42. Long-term care facility shall have the same meaning as defined in section 217 of this act.

Sec. 43. Maintenance treatment shall mean the dispensing pursuant to a chart order, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon narcotic drugs.

Sec. 44. Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container, except that manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use or the

preparation, compounding, packaging, or labeling of a controlled substance: (1) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (2) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

Sec. 45. Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, and other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement officers, whether cured or uncured at that time.

Sec. 46. Medical order shall have the same meaning as defined in section 219 of this act.

Sec. 47. Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (1) Opium, opium poppy and poppy straw, coca leaves, and

opiates; (2) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (3) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (1) and (2) of this section, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium.

Sec. 48. Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan (dextromethorphan) and its salts. Opiate shall include its racemic and levorotatory forms.

Sec. 49. Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof.

Sec. 50. Packager shall have the same meaning as defined in section 225 of this act.

Sec. 51. Person shall mean any corporation, association, partnership, limited liability company, legal entity, including the government, or one or more individuals.

Sec. 52. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or

extracts.

Sec. 53. Pharmacist shall mean an individual licensed by this state to engage in the practice of pharmacy pursuant to section 71-1,142.

Sec. 54. Physician shall mean an individual licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14 or osteopathic medicine or osteopathic medicine and surgery pursuant to sections 71-1,137 to 71-1,141.

Sec. 55. Physician assistant shall mean an individual licensed in accordance with sections 71-1,107.15 to 71-1,107.30.

Sec. 56. Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards.

Sec. 57. Podiatrist shall have the same meaning as defined in section 71-173.

Sec. 58. Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing.

Sec. 59. Practitioner shall mean a physician, dentist, veterinarian, pharmacist, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, scientific investigator, pharmacy, or hospital, licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with

respect to, or administer a controlled substance in the course of professional practice or research, including the provision of emergency medical services.

Sec. 60. Prescribe shall have the same meaning as defined in section 236 of this act.

Sec. 61. Prescription shall have the same meaning as defined in section 237 of this act.

Sec. 62. Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance.

Sec. 63. Registrant shall mean any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice.

Sec. 64. Reverse distributor shall have the same meaning as defined in section 242 of this act.

Sec. 65. Sampling shall have the same meaning as defined in section 243 of this act.

Sec. 66. Signature shall have the same meaning as defined in section 244 of this act.

Sec. 67. Specified situation shall have the same meaning as defined in section 245 of this act.

Sec. 68. Ultimate user shall have the same meaning as defined in section 249 of this act.

Sec. 69. Veterinarian shall have the same meaning as defined in section 71-1,154.

Sec. 70. Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement,

and containing a minimum of ten pinball or video machines.

Sec. 71. Wasting shall have the same meaning as defined in subdivision (3)(e)(i)(E) of section 28-414.

Sec. 72. Working day shall mean any calendar day, excluding Saturday, Sunday, or legal holiday.

Sec. 73. Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

Sec. 74. Nothing in the Uniform Controlled Substances Act shall be construed as authority for a practitioner to perform an act which he or she is not authorized to perform by the laws of this state.

Sec. 75. Section 28-402, Reissue Revised Statutes of Nebraska, is amended to read:

28-402. If any ~~physician~~ practitioner, or other person, while in a state of intoxication, shall prescribe or administer any poison, drug, or ~~medicine~~ device to another person, which shall endanger the life of such other person, he or she shall be guilty of a Class ~~III~~ ~~misdemeanor~~ IV felony.

Sec. 76. Section 28-405, Revised Statutes Supplement, 1998, is amended to read:

28-405. The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and

ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation: (1) Acetylmethadol; (2) allylprodine; (3) alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM; (4) alphameprodine; (5) alphamethadol; (6) benzethidine; (7) betacetylmethadol; (8) betameprodine; (9) betamethadol; (10) betaprodine; (11) clonitazene; (12) dextromoramide; (13) difenoxin; (14) diampromide; (15) diethylthiambutene; (16) dimenoxadol; (17) dimepheptanol; (18) dimethylthiambutene; (19) dioxaphetyl butyrate; (20) dipipanone; (21) ethylmethylthiambutene; (22) etonitazene; (23) etoxeridine; (24) furethidine; (25) hydroxypethidine; (26) ketobemidone; (27) levomoramide; (28) levophenacylmorphan; (29) morpheridine; (30) noracymethadol; (31) norlevorphanol; (32) normethadone; (33) norpipanone; (34) phenadoxone; (35) phenampromide; (36) phenomorphan; (37) phenoperidine; (38) piritramide; (39) proheptazine; (40) properidine; (41) propiram; (42) racemoramide; (43) trimeperidine; (44) alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine; (45) tilidine; (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N- phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers; (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers; (48) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts, and salts of isomers; (49)

N-(1-(1-methyl-2-phenyl)ethyl-4-piperidyl)-N- phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts, and salts of isomers; (50) N-(1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N- phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts, and salts of isomers; (51) N-(1-benxyl-4-piperidyl)-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers; (52) N-(1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts, and salts of isomers; (53) N-(3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts, and salts of isomers; (54) N-(3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N- phenylpropanamide (3-methylthiofentanyl), its optical and geometric isomers, salts, and salts of isomers; (55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers; (56) N-(1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (thiofentanyl), its optical isomers, salts, and salts of isomers; and (57) N-(1-(2-phenylethyl) -4-piperidyl)-N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Acetorphine; (2) acetyldihydrocodeine; (3) benzylmorphine; (4) codeine methylbromide; (5) codeine-N-Oxide; (6) cyprenorphine; (7)

desomorphine; (8) dihydromorphine; (9) drotebanol; (10) etorphine, except hydrochloride salt; (11) heroin; (12) hydromorphinol; (13) methyldesorphine; (14) methyldihydromorphine; (15) morphine methylbromide; (16) morphine methylsulfonate; (17) morphine-N-Oxide; (18) myrophine; (19) nicocodeine; (20) nicomorphine; (21) normorphine; (22) pholcodine; and (23) thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers: (1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(B-Dimethylaminoethyl)-5-hydroxyindole;
3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; and mappine; (2) diethyltryptamine. Trade and other names shall include, but are not limited to: N, N-diethyltryptamine; and DET; (3) dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT; (4) 4-bromo-2, 5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; and 4-bromo-2, 5-DMA; (5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-a-methyl-phenethylamine; and paramethoxyamphetamine, PMA; (6) 4-methyl-2, 5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine;

DOM; and STP; (7) 5-methoxy-N-N, dimethyltryptamine; (8) ibogaine. Trade and other names shall include, but are not limited to: 7-ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and tabernanthe iboga; (9) lysergic acid diethylamide; (10) marijuana; (11) mescaline; (12) peyote; ~~.~~ ~~Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;~~ (13) psilocybin; (14) psilocyn; (15) tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered; (16) 3,4-methylenedioxy amphetamine; (17) 5-methoxy-3, 4-methylenedioxy amphetamine; (18) 3,4,5-trimethoxy amphetamine; (19) N-ethyl-3-piperidyl benzilate; (20) N-methyl-3-peperidyl benzilate; (21) thiophene analog of

phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienylanalog of phencyclidine; TPCP; and TCP; (22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-a-methylphenethylamine; and 2,5-DMA; (23) hashish or concentrated cannabis; (24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6, 9-trimethyl-6H-dibenzo(b,d)pyran; and synhexyl; (25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE; (26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP; ~~and~~ (27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers; and (28) Phenethylamine. Trade and other names shall include, but are not limited to: 4-bromo-2, 5-dimethoxyphenethylamine, 2-CB, Venus, Bromo, Erox, and Nexus.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Mecloqualone; and (2) methaqualone.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: (1) Fenethylline; and (2) N-ethylamphetamine.

(f) Gamma hydroxy butyrate (GHB).

(g) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following: (i) Raw opium; (ii) opium extracts; (iii) opium fluid extracts; (iv) powdered opium; (v) granulated opium; (vi) tincture of opium; (vii) codeine; (viii) ethylmorphine; (ix) etorphine hydrochloride; (x) dihydrocodeinone which is also known as hydrocodone; (xi) hydromorphone; (xii) metopon; (xiii) morphine; (xiv) oxycodone; (xv) oxymorphone; and (xvi) thebaine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision,

except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted: (1) Alphaprodine; (2) anileridine; (3) bezitramide; (4) diphenoxylate; (5) fentanyl; (6) isomethadone; (7) levomethorphan; (8) levorphanol; (9) metazocine; (10) methadone; (11) methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane; (12) moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; (13) pethidine or meperidine; (14) pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; (15) pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; (16)

pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; (17) phenazocine; (18) piminodine; (19) racemethorphan; (20) racemorphan; (21) dihydrocodeine; (22) bulk dextropropoxyphene in nondosage forms; (23) sufentanil; (24) alfentanil; and (25) levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers; (2) phenmetrazine and its salts; (3) methamphetamine, its salts, isomers, and salts of its isomers; and (4) methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations: (1) Amobarbital; (2) secobarbital; (3) pentobarbital; (4) phencyclidine; and (5) glutethimide.

(e) Hallucinogenic substances known as: (1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-o1 or (-)-delta-9-(trans)-tetrahydrocannabinol; and (2) nabilone.

Another name for nabilone is (+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: (1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or (2) immediate precursors to phencyclidine, PCP: (i) 1-phenylcyclohexylamine; or (ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Benzphetamine; (2) chlorphentermine; (3) chlortermine; and (4) phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: (1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are

specifically listed in other schedules of this section; (2) chlorhexadol; (3) lysergic acid; (4) lysergic acid amide; (5) methyprylon; (6) sulfondiethylmethane; (7) sulfonethylmethane; (8) sulfonmethane; (9) nalorphine; (10) any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule; (11) any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository; and (12) tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but not be limited to: telazol. Trade or other names for tiletamine shall include, but not be limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but not be limited to: 4-(2-fluorophenyl)-6, 8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per

dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(d) Any anabolic steroid, which shall include any

material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation: (1) Boldenone; (2) chlorotestosterone (4-chlortestosterone); (3) clostebol; (4) dehydrochlormethyltestosterone; (5) dihydrotestosterone (4-dihydrotestosterone); (6) drostanolone; (7) ethylestrenol; (8) fluoxymesterone; (9) formebulone (formebolone); (10) mesterolone; (11) methandienone; (12) methandranone; (13) methandriol; (14) methandrostenolone; (15) methenolone; (16) methyltestosterone; (17) mibolerone; (18) nandrolone; (19) norethandrolone; (20) oxandrolone; (21) oxymesterone; (22) oxymetholone; (23) stanolone; (24) stanozolol; (25) testolactone; (26) testosterone; (27) trenbolone; and (28) any salt, ester, or isomer of a drug or substance described or listed in this subdivision if the salt, ester, or isomer promotes muscle growth.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Barbital; (2) chloral betaine; (3) chloral hydrate; (4) chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens); (5) clonazepam; (6) clorazepate; (7) diazepam; (8) ethchlorvynol; (9) ethinamate; (10) flurazepam; (11) mebutamate; (12) meprobamate; (13) methohexital; (14) methylphenobarbital; (15) oxazepam; (16)

paraldehyde; (17) petrichloral; (18) phenobarbital; (19) prazepam; (20) alprazolam; (21) bromazepam; (22) camazepam; (23) clobazam; (24) clotiazepam; (25) cloxazolam; (26) delorazepam; (27) estazolam; (28) ethyl loflazepate; (29) fludiazepam; (30) flunitrazepam; (31) halazepam; (32) haloxazolam; (33) ketazolam; (34) loprazolam; (35) lorazepam; (36) lormetazepam; (37) medazepam; (38) nimetazepam; (39) nitrazepam; (40) nordiazepam; (41) oxazolam; (42) pinazepam; (43) temazepam; (44) tetrazepam; (45) triazolam; (46) midazolam; (47) quazepam; and (48) zolpidem.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Diethylpropion; (2) phentermine; (3) pemoline, including organometallic complexes and chelates thereof; (4) mazindol; (5) pipradrol; (6) SPA,((-)-1-dimethylamino-1,2-diphenylethane); (7) cathine. Another name for cathine is ((+)-norpseudoephedrine); (8) fencamfamin; (9) fenproporex; and (10) mefenorex.

(d) Unless specifically excepted or unless listed in

another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below: (1) Propoxyphene; and (2) not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers are excepted from subdivision (g)(1) of Schedule IV if they may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act; are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood

of abuse; and are not marketed, advertised, or labeled for the indication of stimulation, mental alertness, weight loss, muscle enhancement, appetite control, or energy:

(A) Solid oral dosage forms, including soft gelatin capsules, that combine active ingredients in the following ranges for each dosage unit:

(i) Not less than one hundred milligrams nor more than one hundred thirty milligrams of theophylline and not less than twelve and five-tenths milligrams nor more than twenty-four milligrams of ephedrine;

(ii) Not less than sixty milligrams nor more than one hundred milligrams of theophylline, not less than twelve and five-tenths milligrams nor more than twenty-four milligrams of ephedrine, and not less than two hundred milligrams nor more than four hundred milligrams of guaifenesin;

(iii) Not less than twelve and five-tenths milligrams nor more than twenty-five milligrams of ephedrine and not less than two hundred milligrams nor more than four hundred milligrams of guaifenesin; and

(iv) Not more than eight milligrams of phenobarbital in combination with the ingredients of subdivision (g)(2)(A)(i) or (g)(2)(A)(ii) of Schedule IV;

(B) Liquid oral dosage forms that combine active ingredients in the following ranges for each five-milliliter dose:

(i) Not more than forty-five milligrams of theophylline, not more than thirty-six milligrams of ephedrine, not more than one hundred milligrams of guaifenesin, and not more than twelve milligrams of phenobarbital; and

(ii) Not more than five milligrams of phenylephrine, not more than five milligrams of ephedrine, not more than two milligrams of chlorpheniramine, not more than ten milligrams of dextromethorphan, not more than forty milligrams of ammonium chloride, and not more than five one-thousandths of a milligram of ipecac fluid extract; and

(C) Anorectal preparations containing less than five percent ephedrine.

Schedule V

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: (1) Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of

diphenoxylate and not less than twenty-five micrograms of ~~atrophine~~ atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

Sec. 77. Section 28-406, Revised Statutes Supplement, 1998, is amended to read:

28-406. (1) The department ~~is authorized to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, prescribing, and dispensing of controlled substances within this state. Registrations~~ shall issue registrations and reregistrations to manufacture, distribute, prescribe, and dispense controlled substances within this state ~~which become effective on or after September 1, 1997, shall be issued~~ on a biennial basis.

(2) The various fees to be paid by applicants for registrations and reregistrations, as required under the Uniform Controlled Substances Act, shall be as follows:

(a) Registration or reregistration to manufacture controlled substances, not less than one hundred dollars and not more than three hundred dollars; ~~except as provided in subdivision (f) of this subsection;~~

(b) Registration or reregistration to distribute controlled substances, including reverse distributors, not less than one hundred dollars and not more than three hundred dollars; ~~except as provided in subdivision (f) of this subsection;~~

(c) Registration or reregistration to prescribe, administer, or dispense controlled substances, not less than twenty dollars and not more than one hundred fifty dollars; ~~except as provided in subdivision (f) of this subsection;~~

(d) Registration or reregistration to engage in research on the use and effects of controlled substances, not less than fifty dollars and not more than two hundred dollars; ~~except as provided in subdivision (f) of this subsection;~~

(e) Registration or reregistration to engage in laboratory and analytical analysis of controlled substances, not less than fifty dollars and not more than two hundred dollars; ~~except as provided in subdivision (f) of this subsection;~~ and

(f) Registration ~~as provided in subdivisions (a) through (e) of this subsection which becomes effective on or after May 10, 1997, and expires on August 31, 1997, an amount equal to one-half of the fees established under such subdivisions~~ or reregistration to provide detoxification treatment or maintenance treatment, not less than twenty dollars and not more than one hundred fifty dollars.

(3) All registrations and reregistrations ~~effective prior to September 1, 1997,~~ shall expire on ~~August 31, 1997. All registrations and reregistrations which become effective on or after September 1, 1997, shall expire on~~ August 31 of each odd-numbered year. Registration shall be automatically denied without a hearing for nonpayment of fees. Any registration or reregistration not renewed by payment of renewal fees by October 1 of odd-numbered years shall be automatically denied and canceled on October ~~1~~ 2 of odd-numbered years without a hearing.

Sec. 78. Section 28-407, Revised Statutes Supplement, 1998, is amended to read:

28-407. (1) Every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that licensed members of the healing arts, emergency medical services, and facilities licensed by the department shall not be required to have a separate Nebraska controlled substance registration upon providing proof of a Federal Controlled Substance Registration to the department. ~~in accordance with the rules and regulations adopted and promulgated.~~

(2) An applicant for a Nebraska controlled substances registration shall:

(a) Have not been convicted of a felony under any law of the United States or of any state or have not been convicted of a violation relating to any substance defined in the Uniform Controlled Substances Act as a controlled substance under any law of the United States or any state;

(b)(i) Have a current Nebraska license or permit in one of the following categories; Pharmacy or pharmacist, hospital, medicine and surgery, osteopathic medicine, osteopathic medicine and surgery, dentistry, podiatry, physician assistant, certified registered nurse anesthetist, optometry, advanced registered nurse practitioner, or veterinary medicine;

(ii) Be a manufacturer of controlled substances;

(iii) Be a distributor of controlled substances,

including a reverse distributor;

(iv) Be a researcher who conducts chemical analysis with controlled substances in Schedule II, III, IV, or V;

(v) Be a chemist who conducts chemical analysis with controlled substances in any schedule; or

(vi) Be a practitioner who wishes to conduct research with controlled substances in Schedule I;

(c) Inform the department if the applicant's Federal Controlled Substances Registration has ever been suspended or revoked or if the applicant is no longer authorized by federal law to engage in the manufacturing, distribution, or dispensing of controlled substances and provide proof of possession of a valid Federal Controlled Substances Registration;

(d) Have a separate Nebraska controlled substances registration for each location from which the applicant manufactures, distributes, stores, or dispenses a controlled substance;

(e) Submit to the department all information required for application, and if the applicant is a researcher, additionally submit a copy of all proposals for research using controlled substances that were submitted to the Drug Enforcement Administration of the United States Department of Justice; and

(f) Submit the required fees pursuant to section 28-406 and any rules and regulations of the department.

(3) The department shall review all applications to determine completeness and may issue a Nebraska controlled substances registration when the requirements of subsection (2) of this section are met.

(4) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, or distributor~~, or dispenser~~ of any controlled substance, or a registered pharmacy, if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a ~~lawful~~ medical order. ~~of a practitioner.~~

(5) ~~(3)~~ A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, stores, or dispenses a controlled ~~substances~~ substance, except that no registration shall be required in connection with the placement of an emergency box within ~~an institution~~ a long-term care facility pursuant to the ~~provisions of the Emergency Box Drug Act~~ collaborative practice of pharmacy.

(6) ~~(4)~~ The department is authorized to inspect the establishment of a registrant or applicant for registration. ~~in accordance with the rules and regulations promulgated.~~

Sec. 79. Section 28-408, Revised Statutes Supplement, 1998, is amended to read:

28-408. (1) The department shall register an applicant

to manufacture or distribute controlled substances included in Schedules I to V of section 28-405 unless the department determines that such applicant has provided proof of a Federal Controlled Substances Registration or that the issuance of ~~such~~ a state registration is inconsistent with the public interest. In determining the public interest the department shall consider the following factors:

(a) Maintenance of effective controls against diversion of particular controlled substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(b) Compliance with applicable state and local law;

(c) Whether the applicant has been convicted of a felony under any law of the United States or of any state or has been convicted of a violation relating to any ~~substances~~ substance defined in the Uniform Controlled Substances Act as a controlled substance under any law of the United States or any state, except that such fact in itself shall not be an automatic bar to registration;

(d) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion; and

(e) Such other factors as may be relevant to and consistent with the public health and safety.

(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II of section 28-405 other than those specified in the registration.

(3) Except as otherwise provided in this section and ~~section~~ sections 28-407 and 28-409, practitioners shall be registered to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 if they are authorized to prescribe, administer, or dispense under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be referred to the department for approval or disapproval. Registration to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 or registration for the purpose of bona fide research with Schedule I substances by a practitioner may be denied only on a ground specified in subsection (1) of section 28-409 or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his or her supply of such substances against diversion from legitimate medical or scientific use.

(4) Compliance by manufacturers and distributors with the provisions of the Federal Controlled ~~Dangerous~~ Substances Act respecting registration, excluding fees, shall be deemed compliance with this section.

Sec. 80. Section 28-409, Reissue Revised Statutes of Nebraska, is amended to read:

28-409. (1) A registration pursuant to section 28-408 to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be denied, suspended, revoked, or renewal refused by the department upon a finding that the registrant:

(a) Has falsified any application filed pursuant to the Uniform Controlled Substances Act or required by the act;

(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state or has been convicted of a violation relating to any ~~substances~~ substance defined in the act as a controlled substance subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state;

(c) Has had his or her federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the manufacturing, distribution, or dispensing of controlled substances;

(d) Is guilty of any of the acts or offenses listed in section 71-147 for which disciplinary measures may be taken against his or her license, certificate, or registration to practice and which have a rational connection with his or her fitness to prescribe, administer, or dispense a controlled substance. The department may automatically revoke or suspend the registration of a practitioner who has had his or her license, certificate, or registration to practice revoked or suspended and is no longer authorized to prescribe, administer, or dispense under the laws of this state or who has had his or her license, certificate, or registration to practice limited or restricted and is no longer authorized to prescribe, administer, or dispense controlled substances under the laws of this state;

(e) Is habitually intoxicated or is dependent upon or actively addicted to alcohol or any controlled substance or narcotic drug; or

(f) Has violated the Uniform Controlled Substances Act or

any rules or regulations adopted and promulgated pursuant to the act.

(2) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) A person whose registration has been denied, revoked, or suspended shall be afforded an opportunity for a hearing in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the provisions of the Uniform Controlled Substances Act or any law of the state, except that such proceedings may be consolidated with proceedings under section 71-155 or sections 71-161.12 to 71-161.18. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing, except in cases when the department finds that there is an imminent danger to the public health or safety.

(4) The department may suspend any registration simultaneously with the institution of proceedings under this section or when renewal of registration is refused in cases when the department finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(5) In the event the department suspends or revokes a registration granted under section 28-408, all controlled substances owned or possessed by the registrant pursuant to such

registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the department be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

(6) The administration shall be promptly notified of all orders limiting, suspending, or revoking registration.

Sec. 81. Section 28-410, Revised Statutes Supplement, 1998, is amended to read:

28-410. (1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for ~~seven~~ five years.

(2) During ~~the month of April or May in~~ odd-numbered years, each registrant manufacturing, distributing, storing, or dispensing controlled substances shall prepare an inventory of each controlled substance in his or her possession. ~~Records and inventories shall contain such information as shall be required by rules and regulations promulgated by the department.~~ Such inventory shall (a) be taken within two years after the previous inventory date; (b) contain such information as shall be required by the board; (c) have a copy forwarded to the department within thirty days after completion; (d) be maintained at the location

listed on the registration for a period of five years; (e) list the name, address, and DEA number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory; (f) list the exact count or measure of all controlled substances listed in Schedule I or II of section 28-405; (g) list an estimated count or measure of all controlled substances listed in Schedule III, IV, or V of section 28-405, unless the container holds more than one thousand tablets, capsules, or milliliters, in which case the registrant must make an exact count; and (h) be maintained in permanent, read-only form separating the inventory for controlled substances listed in Schedule I or II of section 28-405 from the inventory for controlled substances listed in Schedule III, IV, or V of section 28-405. A registrant shall be guilty of a Class I misdemeanor and subject to a five-thousand-dollar fine for the failure to prepare a controlled substances inventory or the failure to maintain such inventory for five years. A registrant shall be guilty of a Class I misdemeanor and subject to a two-thousand-dollar fine for the failure to forward such inventory to the department.

(3) All registration and reregistration fees shall be remitted to the department and credited to the ~~Pharmacy Fund~~ Nebraska Pharmaceutical Fund for the express purpose of the enforcement responsibilities of the department in accordance with the provisions of the Uniform Controlled Substances Act. This section shall not apply to practitioners who lawfully prescribe~~,~~ or administer, as a part of their professional practice, ~~or occasionally dispense as a part of their professional practice,~~ controlled substances listed in Schedule II, III, IV, or V of

section 28-405, unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled drugs and devices in a manner which will obstruct theft or diversion of the controlled substances. ~~for which they are charged either separately or together with charges for other professional services.~~

Sec. 82. Section 28-411, Revised Statutes Supplement, 1998, is amended to read:

28-411. (1) Every ~~physician, dentist, podiatrist, veterinarian,~~ practitioner or other person who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order, in accordance with subsection (4) of this section. ~~otherwise than by prescription.~~

(2) Manufacturers, ~~and~~ wholesalers, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this

section.

(3) Pharmacies ~~Apothecaries~~ shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4) ~~The form of records shall be prescribed by the Department of Health and Human Services Regulation and Licensure.~~ The record of controlled substances received shall in every case show (a) the date of receipt, (b) the name, ~~and~~ address, and DEA number of the ~~person from whom received~~ individual receiving the controlled substances, (c) the name, address, and DEA number of the person from whom received, (d) the kind and quantity of controlled substances received, ~~(d)~~ (e) the kind and quantity of controlled substances produced or removed from process of manufacture, and ~~(e)~~ (f) the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. Every such record shall be kept for a period of ~~seven~~ five years from the date of the transaction recorded and shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any, the kind and quantity of such controlled substances, and the date of the discovery of such loss, destruction, or theft.

(5) When an automated pharmacy system is used, there shall be a complete, verifiable record available within two working days after a request from the department or law enforcement officer. When an automated pharmacy system becomes inoperable, transactions during the period of inoperability shall be entered into the automated pharmacy system when it becomes operable.

Sec. 83. Section 28-412, Revised Statutes Supplement, 1998, is amended to read:

28-412. ~~It shall be unlawful for any duly licensed practicing physician to prescribe, or for any duly licensed practicing physician, dentist, or veterinarian, to administer, in any manner or form, any cocaine, alpha or beta eucaine, morphine, or opium, or any salt, compound, or derivative of any of the foregoing substances, or any preparation, product, or compound, containing any of the foregoing substances or any of their salts, compounds, or derivatives, for, or to, any person addicted to the habitual use of cocaine, alpha or beta eucaine, morphine, or opium, or any salt, compound, or derivative of any of the foregoing substances, or any preparation, product, or compound containing any of the foregoing substances or any of their salts, compounds, or derivatives, except that a reputable and duly licensed practicing physician may personally administer to a patient who is a habitual user of such drugs, or any of them, necessary doses thereof, when it has been in good faith determined by two reputable and duly licensed practicing physicians, in consultation, to be absolutely necessary in the medical treatment of such patient, in which case, the physician administering such drugs, or any of them, shall make and keep a record in writing of the name and address of the person~~

~~to whom such drugs, or any of them, were administered, the date administered, the form and quantity of drug administered, the name and address of the consulting physician, and the date and place of consultation. Such record shall be retained and preserved within the State of Nebraska, and the county where administered, for a period of at least seven years, and shall always be open for inspection by the Department of Health and Human Services Regulation and Licensure, state, county and city health officers, county attorneys, grand juries, and all officers of the law, and by agents appointed by them, or any of them, for the purpose of making an inspection. The record shall be made at the time of each administration of such drugs, or any of them, and a copy of the record shall, within five days after each administration of such drugs, or any of them, as in this section provided, be filed with the county attorney of the county in which the administering took place, by the physician administering the drugs, or any of them, and shall have affixed thereto the signature and address of the administering physician.~~ (1) It shall be illegal to issue a prescription for any narcotic drug listed in section 28-405 for the purpose of detoxification treatment or maintenance treatment, except that a narcotic drug which is administered or dispensed pursuant to a chart order to a narcotic-dependent person for detoxification treatment or maintenance treatment shall be deemed to be therapeutically appropriate if the practitioner is registered with the state to provide detoxification treatment or maintenance treatment pursuant section 28-406.

(2) Nothing in this section shall prohibit a physician who is not specifically registered to provide detoxification

treatment or maintenance treatment from administering or issuing a chart order for narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one day's supply of narcotic drugs may be administered or dispensed to the person for his or her use at one time. Such emergency treatment shall not be carried out for more than three days and shall not be renewed or extended.

(3) This section is not intended to impose any limitations on a practitioner who administers or dispenses narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment conditions other than addiction.

(4) Any person violating any of the provisions or requirements of this section or any part thereof shall be guilty of a Class IV felony.

Sec. 84. Section 28-413, Reissue Revised Statutes of Nebraska, is amended to read:

28-413. Controlled substances listed in Schedules I and II of section 28-405 shall be distributed by a registrant to another registrant only pursuant to ~~an order form~~ Form-222 issued by the federal Drug Enforcement Administration. Compliance with the provisions of the Federal Controlled ~~Dangerous~~ Substances Act respecting order forms shall be deemed compliance with this section.

Sec. 85. Section 28-414, Revised Statutes Supplement, 1998, is amended to read:

28-414. (1)(a)(i) Except as provided in subdivision

(1)(b) of this section or section 28-412 or when administered directly by a practitioner~~, other than a pharmacist,~~ to an ultimate user, ~~no~~ a controlled substance included in Schedule II of section 28-405 ~~may~~ shall not be dispensed without the written prescription bearing the signature of a practitioner, except that in emergency situations~~, as prescribed by the department by rule and regulation,~~ such substance may be dispensed pursuant to ~~a facsimile~~ an electromagnetic transmission of a prescription bearing the word emergency or upon ~~oral~~ a verbal prescription reduced promptly to writing in conformity with subdivision ~~(4)(b)~~ (3)(b) of this this section, filed by the pharmacist. Emergency verbal prescriptions shall contain all information required in subdivision (3)(b) of this section, except the prescribing practitioner's signature. Prescriptions for a controlled substance listed in Schedule II of section 28-405 shall not be filled more than six months from the date of issuance. A ~~No~~ prescription ~~for a Schedule II substance may~~ for a controlled substance listed in section 28-405 shall not be refilled.

(ii) Emergency prescriptions for a controlled substance listed in Schedule II of section 28-405 shall specify a quantity not to exceed a seventy-two-hour supply to be dispensed to adequately treat the patient during the emergency period. If the prescribing practitioner is not known to the pharmacist, he or she shall make a reasonable effort to determine that the emergency authorization came from a registered practitioner. The pharmacy must receive a written, signed prescription for all controlled substances listed in Schedule II of section 28-405 that were dispensed upon the emergency authorization of a prescribing

practitioner, bearing the words, Authorization for Emergency Dispensing, and the date of the emergency authorization within seven days or postmarked within seven days from the emergency authorization. Upon receipt of such written, signed prescription, the pharmacist shall attach it to the verbal emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the department if the prescribing practitioner fails to deliver such written prescription to him or her. Dispensing beyond the emergency period shall be pursuant to a written, signed prescription of the practitioner.

(b)(i) A signed prescription for a controlled substance ~~included~~ listed in Schedule II of section 28-405 may be transmitted by the practitioner or the practitioner's agent to a pharmacy by ~~facsimile equipment,~~ electromagnetic transmission if the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance except as provided in subdivision (1)(b)(ii), ~~or~~ (1)(b)(iii), or (1)(b)(iv) of this section.

(ii) A written, signed prescription ~~written~~ for a ~~narcotic~~ controlled substance ~~included~~ listed in Schedule II of section 28-405 to be compounded for the direct parenteral administration to a patient ~~by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion~~ may be electromagnetically transmitted by the practitioner or the practitioner's agent to the pharmacy ~~by facsimile equipment~~ for the purpose of home infusion therapy. The ~~facsimile~~ paper document produced by the electromagnetic transmission equipment shall serve as the original written prescription for purposes of this

subdivision ~~(1)(b)(ii) of this section~~ and it shall be maintained in accordance with the provisions of subdivision (3)(a) ~~(4)(a)~~ of this section.

(iii) A written, signed prescription ~~written~~ for a controlled substance ~~included~~ listed in Schedule II of section 28-405 for a resident of a long-term care facility may be electromagnetically transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy. ~~by facsimile equipment.~~ The ~~facsimile~~ paper document produced by the electromagnetic transmission equipment shall serve as the original written prescription for purposes of this subdivision ~~(1)(b)(iii) of this section~~ and it shall be maintained in accordance with the provisions of subdivision (3)(a) ~~(4)(a)~~ of this section.

(iv) A written, signed prescription for a narcotic drug listed in Schedule II of section 28-405 bearing the words, hospice patient, may be electromagnetically transmitted by the practitioner or the practitioner's agent to the pharmacy for a patient of a hospice certified by Medicare under Title XVIII or licensed by the state. The paper document produced by the electromagnetic transmission equipment shall serve as the original written prescription for purposes of this subdivision and such document shall be maintained in accordance with the provisions of subdivision (3)(a) of this section.

(c)(i) The partial filling of a prescription for a controlled substance listed in Schedule II of section 28-405 is permissible if the pharmacist does not supply the full quantity prescribed ~~called for in a written, emergency oral, or facsimile prescription~~ and he or she makes a notation of the quantity

supplied on the face of the ~~written~~ prescription. ~~or written record of the emergency oral or facsimile prescription.~~ The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall so notify the prescribing practitioner or his or her agent. No further quantity may be supplied beyond seventy-two hours without a new written, signed prescription of the practitioner.

(ii) ~~(c)~~ A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities. ~~to include individual dosage units.~~ If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner or practitioner's agent prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. ~~The pharmacist shall record on the prescription whether the patient is terminally ill or a long-term care facility patient.~~ Except as provided in subdivision ~~(1)(b)(iv)~~ (1)(c)(i) of this section, a prescription that is partially filled and does not contain the notation terminally ill or long-term care facility patient shall be deemed to have been filled in violation of the Uniform Controlled Substances Act. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record,

uniformly maintained and readily retrievable within two working days, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. ~~Prior to any subsequent partial filling the pharmacist is to determine that the additional partial filling is necessary.~~ The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in ~~a~~ long-term care ~~facility~~ facilities or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty days from the date of issuance unless sooner terminated by the discontinuance of ~~medication~~ the drug or device.

(2)(a) Except as provided in subdivision (2)(b) of this section or when administered directly by a practitioner~~,~~ ~~other than a pharmacist,~~ to an ultimate user, ~~no other~~ controlled substance ~~included~~ listed in Schedule III, ~~or~~ IV, or V of section 28-405 which is a prescription drug as determined under the laws of this state or the laws of the United States ~~may~~ shall not be dispensed without a written or ~~oral~~ verbal prescription. ~~Such prescription may~~ Any such prescription shall not be filled more than six months ~~after~~ from the date of ~~the prescription~~ issuance. Practitioner authorization shall be required to refill any such prescription. Such refills may not occur more than five times within six months ~~after~~ from the date of ~~the prescription~~ issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V may be transferred between pharmacies for purposes of dispensing pursuant to section 327 of this act.

(b) A prescription for a controlled substance ~~included~~ listed in Schedule III, ~~or~~ IV, or V of section 28-405 may be electromagnetically transmitted by the practitioner or his or her agent to a pharmacy. ~~by facsimile equipment.~~ The ~~facsimile~~ paper document produced by the electromagnetic transmission equipment shall serve as the original written prescription for purposes of this subdivision and it shall be maintained in accordance with the provisions of subdivision ~~(4)(c)~~ (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, ~~or~~ IV, or V of section 28-405 may be filled in partial quantities if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed or authorized by the prescribing practitioner, and (iii) each partial filling is dispensed within six months ~~after~~ from the date on which the prescription was issued.

~~(3)(a) Except as provided in subdivision (3)(b) of this section or when administered directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule V of section 28-405 may be dispensed without a written or oral prescription.~~

~~(b) A prescription for a controlled substance included in Schedule V of section 28-405 may be transmitted by the practitioner to a pharmacy by facsimile equipment. The facsimile shall serve as the original written prescription for purposes of this subdivision and it shall be maintained in accordance with the provisions of subdivision (4)(c) of this section.~~

(3)(a) ~~(4)(a)~~ Prescriptions for all Schedule II

controlled substances listed in section 28-405 shall be kept in a separate file by the practitioner, shall be maintained for a minimum of ~~seven~~ five years, and shall be available to ~~authorized agents of~~ the department and ~~the Division of Drug Control~~ law enforcement officers for inspection without any requirement for obtaining a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, ~~and~~ the name and address of the prescribing practitioner, ~~including the registry number under the federal narcotic laws of the prescribing practitioner~~ the DEA number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The ~~pharmacist or~~ practitioner filling the prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall state the name and address of the owner of the animal and the species of the animal in addition to the other information required by this subdivision.

(c) Prescriptions for all controlled substances listed in Schedules III, IV, and V of section 28-405 shall be filed separately from other prescriptions in a single file by the practitioner and shall be maintained for a minimum of ~~seven~~ five years. The practitioner shall be required to make all prescription files readily available to ~~authorized agents of~~ the department and ~~the Division of Drug Control~~ law enforcement officers for inspection within two working days after issuance without any requirement for obtaining a search warrant.

(d) All prescriptions for controlled substances listed in

~~Schedules~~ Schedule III, IV, ~~and~~ or V of section 28-405 shall contain the name and address of the patient, ~~and~~ the name and address of the prescribing practitioner, ~~including the registry number of the prescribing practitioner under the federal narcotics laws~~ the DEA number of the prescribing practitioner, and the date of issuance. Written or electromagnetically transmitted prescriptions shall contain the prescribing practitioner's signature. The requirement for the prescribing practitioner's signature shall not apply to verbal prescriptions. If the prescription is for an animal, it shall state the owner's name and address and species of the animal in addition to the other information required by this subdivision.

(e) The owner of any stock of controlled substances listed in ~~Schedules I and II of~~ section 28-405, ~~upon discontinuance of the dealing in such substances, may sell such substances to a manufacturer, wholesaler, or apothecary but only on an official order form as required by section 28-413~~ when the need for such substances ceases, may:

(i) When the owner is a registrant:

(A) Transfer controlled substances listed in Schedule I or II to another registrant, but only on a federal Drug Enforcement Administration Form-222 as required by section 28-413;

(B) Transfer controlled substances listed in Schedule III, IV, or V to another registrant, but only in accordance with subsection (4) of section 28-411;

(C) Maintain the controlled substances separate from saleable inventory for destruction by an inspector of the board to be documented on a federal Drug Enforcement Administration Form-41;

(D) With prior written approval of the board, destroy the controlled substances listed in Schedule II, III, IV, or V when witnessed by two responsible parties employed by or acting on behalf of the registrant, one of whom must be a member of the healing arts. Upon destruction, a Federal Drug Enforcement Administration Form-41 shall be completed in accordance with the Federal Controlled Substances Act; or

(E) Destroy liquid controlled substances, in opened containers which originally contained fifty milliliters or less, or compounded liquid controlled substances, within the facility where they were compounded, when witnessed by two members of the healing arts in accordance with subsection (4) of section 28-411;

(ii) When the owner is a patient:

(A) Transfer the controlled substance to a pharmacy for immediate destruction by two responsible parties acting on behalf of the registrant, one of whom must be a member of the healing arts;

(B) Who is a resident of a long-term care facility or hospital and the controlled substance is listed in Schedule II or III of section 28-405, the long-term care facility or hospital shall assure that such substances are destroyed and witnessed by an employee pharmacist or a consultant pharmacist and a member of the healing arts; or

(C) Who is a resident of a long-term care facility or hospital and the controlled substance is listed in Schedule IV or V of section 28-405, the long-term care facility or hospital shall assure that such substances are destroyed and witnessed by an employee pharmacist or a consultant pharmacist and another

responsible adult; and

(iii) Complete records of controlled substances destruction pursuant to this subsection shall be maintained by the registrant for five years from the date of destruction.

(f) No ~~pharmacist or dispensing~~ practitioner shall dispense any controlled substance ~~contained~~ listed in Schedule II, III, IV, or V of section 28-405 without affixing to the container in which the substance is dispensed a label bearing the name and address of the pharmacy or dispensing practitioner, the name of the specific patient or the description of the specified situation, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription files, the name of the ~~physician, dentist, veterinarian, or other prescribing practitioner who prescribes it~~ prescribing practitioner, and the directions for the use of the drug. Unless the prescribing practitioner writes do not label or words of similar import on the prescription or so designates in ~~an oral or facsimile~~ verbal or electromagnetic transmission of the prescription, all prescriptions for a controlled substance ~~contained~~ listed in Schedule II, III, IV, or V of section 28-405 shall bear upon the label the name of the substance in the container. This subdivision shall not apply to sampling.

~~(g) No pharmacist or dispensing practitioner shall dispense any controlled substance contained in Schedules III, IV, and V of section 28-405 without affixing to the container in which the substance is dispensed a label bearing the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of initial filling, the consecutive number of the~~

~~prescription under which it is recorded in the practitioner's prescription files, the name of the physician, dentist, veterinarian, or other prescribing practitioner who prescribes it, and the directions for the use of the drug. Unless the prescribing practitioner writes do not label or words of similar import on the prescription or so designates in an oral or facsimile transmission of the prescription, all prescriptions for a controlled substance contained in Schedules III, IV, and V of section 28-405 shall bear upon the label the name of the substance in the container.~~

Sec. 86. Section 28-415, Reissue Revised Statutes of Nebraska, is amended to read:

28-415. (1) Whenever a manufacturer, distributor, packager, or wholesaler transfers a controlled substance ~~sells or dispenses a narcotic drug and whenever a wholesaler sells or dispenses a narcotic drug~~ in a package prepared by him or her, he or she shall securely affix to each package in which the drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of ~~narcotic drug~~ the controlled substance contained therein. No person, except ~~an apothecary~~ a practitioner for the purpose of ~~filling a prescription~~ dispensing under ~~this article~~ the Uniform Controlled Substances Act, shall alter, deface, or remove any label so affixed.

(2) Whenever ~~an apothecary sells or~~ a practitioner dispenses any ~~narcotic drug on a prescription~~ controlled substance upon medical order issued by a ~~physician, dentist, podiatrist, or veterinarian~~ practitioner, he or she shall affix to the container in which such drug is ~~sold or~~ dispensed a label in accordance with the requirements stated in ~~subdivisions (4)(f) and (g)~~ subdivision

(3)(f) of section 28-414. No person shall alter, deface, or remove any label so affixed.

Sec. 87. Section 28-416, Revised Statutes Supplement, 1998, is amended to read:

28-416. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit ~~controlled~~ substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance ~~classified~~ listed in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance ~~classified~~ listed in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance ~~classified~~ listed in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)~~(a)~~ Except as authorized by the Uniform Controlled

Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance ~~(i)~~ (a) to a person under the age of eighteen years, ~~(ii)~~ (b) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or ~~(iii)~~ (c) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

~~(b) For purposes of this subsection:~~

~~(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;~~

~~(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and~~

~~(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.~~

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance. ~~or a counterfeit controlled substance.~~

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance. ~~or a counterfeit controlled substance.~~

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty

classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance

containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of at least seven ounces or more shall be guilty of a Class II felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(15) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence.

(16) A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

Sec. 88. Section 28-417, Reissue Revised Statutes of Nebraska, is amended to read:

28-417. (1) It shall be unlawful for any person:

(a) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled ~~Dangerous~~ Substances Act or required by the laws of this state;

(b) To alter, deface, or remove any label affixed to a

package of ~~narcotic~~ ~~drugs~~ controlled substances, except when dispensing;

(c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under ~~this~~ ~~article~~ the Uniform Controlled Substances Act;

(d) To refuse any entry into any premises for inspection authorized by ~~this~~ ~~article~~ the Uniform Controlled Substances Act;

(e) To keep or maintain any store, shop, warehouse, dwelling, house, building, vehicle, boat, aircraft, or ~~any~~ place whatever which such person knows or should know is resorted to by persons using controlled substances in violation of ~~this~~ ~~article~~ the Uniform Controlled Substances Act for the purpose of using such substances or which is used for the keeping or selling of the same in violation of ~~this~~ ~~article~~ the act;

(f) To whom or for whose use any controlled substance has been prescribed~~,~~ ~~sold,~~ or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed~~,~~ ~~sold,~~ or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or

(g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a person duly authorized by law to treat sick and injured human beings. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this

subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled substance.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 89. Section 28-418, Reissue Revised Statutes of Nebraska, is amended to read:

28-418. (1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance ~~classified~~ listed in Schedule I or II of section 28-405 in the course of his or her legitimate business except pursuant to ~~an order form as required by section 28-413~~ a Form-222 issued by the federal Drug Enforcement Administration;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under ~~this article~~ the Uniform Controlled Substances Act or any record required to be kept by ~~this article~~ the act;

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or

reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit ~~controlled~~ substance;

(f) Who is subject to sections 28-406 to 28-414 to distribute or dispense a controlled substance in violation of section 28-414;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged ~~prescription~~ medical order for a controlled substance, except that this subdivision shall not apply to law enforcement ~~officials~~ officers, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate false or fraudulent information to a practitioner in an effort to ~~unlawfully~~ procure a controlled substance, the administration of a controlled substance, or a ~~prescription~~ medical order for a controlled substance.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Sec. 90. Section 28-427, Reissue Revised Statutes of Nebraska, is amended to read:

28-427. Any penalty imposed for violation of ~~this article~~ the Uniform Controlled Substances Act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. ~~A conviction or acquittal under~~

~~federal law or the law of another state having a substantially similar law shall be a bar to prosecution in this state for the same act. Should~~ The court may order any person ~~be~~ convicted ~~for~~ of a violation of ~~this article~~ the act, in addition to any penalty imposed by the court, ~~the court may order that such person~~ to make restitution to any law enforcement agency for reasonable expenditures made in the purchase of any controlled substances from such person or his or her agent as part of the investigation leading to such conviction.

Sec. 91. Section 28-428, Revised Statutes Supplement, 1998, is amended to read:

28-428. (1) Administrative inspections of controlled premises are authorized in accordance with the following provisions:

(a) ~~For purposes of the Uniform Controlled Substances Act only, controlled premises shall mean: (i) Places where persons registered or exempted from registration requirements under the act are required to keep records; and (ii) places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under the act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance;~~

~~(b)~~ When so authorized by an administrative inspection or an officer of the Division of Drug Control or an authorized agent of the department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection;

(b) ~~(c)~~ When so authorized by an administrative inspection warrant, an officer of the Division of Drug Control or an authorized agent of the department shall have the right: (i) To inspect and copy records required by the ~~act~~ Uniform Controlled Substances Act to be kept; (ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found therein, and, except as otherwise provided in subdivision ~~(1)(e)(ii)~~ (1)(d)(ii) of this section, all other things therein, including records, files, papers, processes, controls, and facilities, bearing on any violation of the act; and (iii) to inventory any stock of any controlled substance therein and obtain samples of any such substance;

~~(d)~~ (c) This section shall not be construed to prevent entries and administrative inspections including seizures of property without a warrant: (i) With the consent of the owner, operator, or agent in charge of the controlled premises; (ii) in situations presenting imminent danger to health or safety; (iii) in situations involving inspection of any conveyance when there is reasonable cause to believe that such conveyance contains substances possessed or carried in violation of the act; (iv) in any other exceptional or emergency circumstance when time or opportunity to apply for a warrant is lacking; and (v) in all other situations when a warrant is not constitutionally required; and

~~(e)~~ (d) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to (i) financial data; (ii) sales data other than shipment data; or (iii) pricing

data.

(2) For the purpose of the execution of administrative inspection warrants, an authorized agent of the department shall be deemed to be a ~~peace officer~~ law enforcement officer.

(3) Issuance and execution of administrative inspection warrants for controlled premises shall be in accordance with the provisions of sections 29-830 to 29-835, except that inspection warrants for the purpose of the act shall be issued not only upon a showing that consent to entry for inspection purposes has been refused, but also in all cases when the judge of a court of record has been given reason to believe that consent would be refused if requested.

Sec. 92. Section 28-431, Revised Statutes Supplement, 1998, is amended to read:

28-431. (1) The following shall be seized without warrant by an officer of the Division of Drug Control or by any ~~peace officer~~ law enforcement officer and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the Uniform Controlled Substances Act; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the act; (c) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (d) all drug paraphernalia defined in section ~~28-439~~ 30 of this act; (e) all books, records, and research, including, but not limited to,

formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of the act; (f) all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of the act; and (g) all money used, or intended to be used, to facilitate a violation of the act.

(2) Any property described in subdivision (1)(f) of this section which is used, or intended for use, to transport any property described in subdivision (1)(a) or (b) of this section is hereby declared to be a common nuisance, and any ~~peace officer~~ law enforcement officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) to (1)(e) of this section shall be kept by the property division of the law enforcement agency which employs the law enforcement officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(e) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), and (d) of this section, that has been used or is intended to

be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), and (d) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), and (d) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(f) or (g) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall

have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she had no knowledge that such property was being used in violation of the Uniform Controlled Substances Act.

Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the act may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the court. If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of the act, (b) has an interest in such property as owner or lienor

or otherwise, acquired by him or her in good faith, and (c) at no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of the act, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown beyond a reasonable doubt that such property was used in violation of the act, the court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(f) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(g) of this section shall be distributed pursuant to section 28-1439.02. Official use shall mean use directly in connection with enforcement of the act.

Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the property if such title is required

under the laws of this state.

Sec. 93. Section 28-432, Reissue Revised Statutes of Nebraska, is amended to read:

28-432. (1) It shall not be necessary for the state to negate any exemption or exception set forth in ~~this article~~ the Uniform Controlled Substances Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under the provisions of ~~this article~~ the act, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under the provisions of ~~this article~~ the act, he or she shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

Sec. 94. Section 28-433, Reissue Revised Statutes of Nebraska, is amended to read:

28-433. All final determinations, findings, and conclusions of the department under ~~this article~~ the Uniform Controlled Substances Act shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 95. Section 28-437, Reissue Revised Statutes of Nebraska, is amended to read:

28-437. ~~This article~~ The Uniform Controlled Substances Act shall be so applied and construed as to effectuate its general

purpose to make uniform the law with respect to the subject of ~~this article~~ the act among those states which enact it.

Sec. 96. Section 28-440, Reissue Revised Statutes of Nebraska, is amended to read:

28-440. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this act;

(4) The proximity of the object to any controlled substance;

(5) The existence of any residue of a controlled substance on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of ~~sections 28-101, 28-431, and 28-439 to 28-444~~ the Uniform Controlled Substances Act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of ~~sections 28-101, 28-431, and 28-439 to 28-444~~ the act shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the

object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(13) The existence and scope of any legitimate use for the object in the community; and

(14) Expert testimony concerning its use.

Sec. 97. Section 28-441, Reissue Revised Statutes of Nebraska, is amended to read:

28-441. (1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ~~sections 28-101, 28-431, and 28-439 to 28-444~~ the Uniform Controlled Substances Act.

(2) Any person who violates this section shall be guilty of an infraction.

Sec. 98. Section 28-442, Reissue Revised Statutes of Nebraska, is amended to read:

28-442. (1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances ~~where~~ in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale~~,~~ or otherwise be used to introduce into the human body a controlled substance in violation of ~~sections 28-101, 28-431, and 28-439 to 28-444~~ the Uniform Controlled Substances Act.

(2) Any person who violates this section shall be guilty of a Class II misdemeanor.

Sec. 99. Section 28-444, Reissue Revised Statutes of Nebraska, is amended to read:

28-444. (1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication or media any advertisement~~,~~ knowing, or under circumstances ~~where~~ in which one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 100. Any practitioner, facility employee, or employer of such practitioner or facility employee who gives information to a law enforcement officer or professional board shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information. For purposes of this section, information shall have the same meaning as defined in section 28-1438.01.

Sec. 101. Section 28-1437, Revised Statutes Supplement,

1998, is amended to read:

28-1437. ~~(1)~~ It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain by means of theft, misrepresentation, fraud, forgery, deception, or subterfuge possession of any ~~drug substance~~ prescription drug or device not ~~classified~~ listed as a controlled substance under the Uniform Controlled Substances Act. For purposes of this section, prescription drug shall have the same meaning as defined in section 238 of this act. Violation of this section shall be a Class I misdemeanor. ~~, but which can only be lawfully distributed, under federal statutes in effect on April 16, 1996, upon the written or oral order of a practitioner authorized to prescribe such substances.~~

~~(2) Such substances as referred to in subsection (1) of this section shall be known as legend drug substances, which shall be defined as including all drug substances not classified as controlled substances under the Uniform Controlled Substances Act, but which require a written or oral prescription from a practitioner authorized to prescribe such substances and which may only be lawfully dispensed by a duly licensed pharmacist, in accordance with the provisions of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 to 392, in effect on April 16, 1996.~~

~~(3) A prescription for a legend drug may be transmitted by the practitioner to a pharmacy by facsimile equipment. The facsimile shall serve as the original written prescription for purposes of this subsection.~~

Sec. 102. Section 28-1438.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-1438.01. (1) Any practitioner, facility employee, or employer of a practitioner or facility employee who gives information to a law enforcement officer or professional board shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.

(2) As used in this section, unless the context otherwise requires:

(a) Information shall mean information regarding unlawfully obtaining or attempting to obtain from a practitioner (i) a controlled substance, (ii) a written or ~~oral~~ verbal prescription for a controlled substance, or (iii) the administration of a controlled substance;

(b) Law enforcement officer shall have the definition found in section 81-1401; and

(c) Practitioner shall have the definition found in section ~~28-401~~ 59 of this act.

Sec. 103. Section 37-1254.01, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.01. (1) No person shall be in the actual physical control of any motorboat under propulsion upon the waters of this state:

(a) While under the influence of alcohol or of any controlled substance as defined in section ~~28-401~~ 15 of this act;

(b) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

(c) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two

hundred ten liters of his or her breath; or

(d) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) Any person who is in the actual physical control of any motorboat under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a Class II misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the physical control of a motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction, except that if the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(3) Any city or village may enact ordinances in conformance with this section and section 37-1254.02.

(4) At the discretion of the court, any person convicted of violating this section or violating any city or village ordinance adopted in conformance with this section may be required to attend, at the convicted person's expense, an alcoholism treatment program as a term of probation.

Sec. 104. Section 37-1254.07, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.07. Upon the conviction of any person for violation of section 37-1254.01 or for being in actual physical

control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol or of any controlled substance as defined in section ~~28-401~~ 15 of this act in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests, pursuant to a permit issued in accordance with section 37-1254.05, for the test administered and the analysis thereof pursuant to section 37-1254.02 if such test was actually made.

Sec. 105. Section 48-232, Reissue Revised Statutes of Nebraska, is amended to read:

48-232. For purposes of section 48-233:

(1) Anabolic steroid shall have the definition found in section ~~28-401~~ 8 of this act;

(2) Employee shall mean any person, paid or unpaid, who in any way assists an entity in carrying out the business activities of such entity. Employee shall include an independent contractor;

(3) Institution shall mean any public elementary, secondary, or postsecondary educational institution;

(4) Political subdivision shall have the definition found in section 13-903;

(5) State agency shall have the definition of agency as found in section 81-1705; and

(6) Subordinate employee shall mean a person employed by the same employer as and directly or indirectly supervised in the course of such employment by an employee.

Sec. 106. Section 48-1102, Reissue Revised Statutes of

Nebraska, is amended to read:

48-1102. For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for

an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the

employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) ~~Nothing in this~~ This subdivision shall not be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with

disabilities. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome

sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section ~~28-401~~ 15 of this act; and

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law.

Sec. 107. Section 48-1902, Reissue Revised Statutes of Nebraska, is amended to read:

48-1902. For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor defined in subdivisions (1) through (4) of section 53-103,

alcohol, spirits, wine, and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device shall mean intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(5) Department rules and regulations shall mean the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug shall mean any substance, chemical, or compound as described, defined, or delineated in ~~sections~~ section 28-405 ~~and 28-419~~ or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee shall mean any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer shall mean the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing

business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Sec. 108. Section 71-101, Revised Statutes Supplement, 1998, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1301 to 71-1354, and 71-2801 to 71-2822 and sections 170 to 254, 256 to 258, 263, and 271 of this act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board ~~of examiners or board~~ shall mean one of the boards of examiners or the Board of Pharmacy as appointed by the State Board of Health;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, shall mean a person licensed under the Uniform Licensing Law;

(3) Profession or health profession shall mean and refer to any of the several groups named in section 71-102;

(4) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it shall be construed to include both the masculine and the feminine, and the singular number shall include the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and

which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, shall mean a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate shall also mean a document issued by the department which designates particular credentials for an individual; ~~and~~

(8) Lapse shall mean the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Director shall mean the Director of Regulation and Licensure;

(10) Dependence shall mean a compulsive or chronic need or an addiction; and

(11) Telehealth shall mean the distance practice of a healing art by which the practitioner engages in one of the aspects of the scope of practice of such healing art at a site other than the site where the patient is located. Telehealth shall not include professional consultation between practitioners or didactic training of practitioners or students if no patient contact occurs.

Sec. 109. Section 71-101.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-101.01. Whenever the term healing art or healing arts is used in any statute, unless such statute specifically designates otherwise, it shall be construed to refer exclusively to a health profession in which a licensed practitioner offers or undertakes to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity, or physical or mental condition. Members of the healing arts include, but are not limited to, physicians, osteopathic physicians and surgeons, advanced registered nurse practitioners, certified nurse midwives, pharmacists, physician assistants, optometrists, podiatrists, and dentists. All members of the healing arts shall be considered primary health care providers. Nothing in this section shall be construed to enlarge the scope or definition for practice of any practitioner licensed in accordance with Chapter 71, article 1.

Sec. 110. Section 71-105, Reissue Revised Statutes of Nebraska, is amended to read:

71-105. Every license, certificate, or registration to practice a profession shall be in the form of a document under the name and seal of the department ~~Department of Health and Human Services Regulation and Licensure~~ and signed by the director ~~Director of Regulation and Licensure~~ and the Governor. It shall also be countersigned by the members of the board ~~of examiners~~ which gives or authorizes the examination for the particular profession, except that all licenses, certificates, and registrations granted without examination may be issued by the department under its name and seal and signed by its director and the Governor. A copy of all licenses, certificates, and registrations shall be retained in the department and given the

same number as has been assigned to the licensee, certificate holder, or registrant in the other records of the department.

Sec. 111. Section 71-107, Reissue Revised Statutes of Nebraska, is amended to read:

71-107. Every person licensed, certified, or registered under the Uniform Licensing Law to practice a profession shall keep such license, certificate, or registration at ~~displayed~~ ~~in~~ the office, facility, or place in which he or she practices. Any such licensed, certified, or registered individual who has direct contact with the public shall ~~and~~ place and keep placed, in a conspicuous place, ~~at each entrance thereto,~~ a sign, in intelligible lettering not less than one inch in height, containing the name of such person immediately followed by the recognized abbreviation indicating the professional degree or professional designation, if any, held by such person.

In addition to the foregoing, those persons licensed or certified to practice osteopathic medicine, chiropractic, podiatry, optometry, audiology, speech-language pathology, medical nutrition therapy, professional counseling, social work, marriage and family therapy, mental health practice, massage therapy, or physical therapy shall cause to be placed upon such signs, in lettering of equal height, the word Osteopathic Physician, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Medical Nutrition Therapist, Professional Counselor, Social Worker, Master Social Worker, Marriage and Family Therapist, Mental Health Practitioner, Massage Therapist, or Physical Therapist, as the case may be. The same wording shall be used in all signs, announcements, stationery, and advertisements of such licensees and

certificate holders.

Sec. 112. Section 71-108, Revised Statutes Supplement, 1998, is amended to read:

71-108. The name, date and place of birth, location or post office address, school and date of graduation, date of examination and ratings or grades received, and date of a license, certificate, or registration if one is issued of all applicants for examination in the several professions regulated by the Uniform Licensing Law shall be entered in a ~~book kept in the office of the department to be known as the~~ registry record. A separate registry record shall be kept for each profession, the names of applicants in that profession shall be given consecutive numbers, and all other records relating to that application or the license, certificate, or registration granted pursuant to that application shall be given the same number. A list shall also be kept of those granted licenses, certificates, or registrations in the several professions. Applications for a license, certificate, or registration shall be upon forms prepared by the department, and the completed applications shall be kept as a part of the permanent files of the department. If the applicant is an individual, the application shall include the applicant's social security number. All applications based on licenses, certificates, or registrations granted in other states shall be received upon forms prepared by the department and entered in the registry records as nearly as may be in the same form as are those applying for examinations. In addition, the date of license, certificate, or registration and the length of time of practice in the other state shall be given and entered. The data in any or all of such records may be maintained

in computer files, placed upon microfilm, or stored in a similar form. All such records, in whatever form, shall be available for public inspection, as defined by rules and regulations of the department. Investigational records, reports, and files pertaining to an application shall not be a public record until action is taken to grant or deny the application and may be withheld from disclosure thereafter under section 84-712.05.

Sec. 113. Section 71-110, Revised Statutes Supplement, 1998, is amended to read:

71-110. (1) The different licenses, certificates, or registrations to practice a profession shall be renewed biennially, except as provided in sections 71-1,228 and 71-1,294, upon request of the licensee, certificate holder, or registrant, without examination. The biennial license, certificate, or registration renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows:

(a) January, pharmacy and psychology;

(b) February, funeral directing and embalming;

(c) March, dentistry and dental hygiene;

(d) April, podiatry and veterinary medicine and surgery;

(e) May, athletic training;

(f) June, respiratory care;

(g) August, chiropractic and optometry;

(h) September, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;

(i) October, medicine and surgery;

(j) November, massage therapy and physical therapy; and

(k) December, audiology and speech-language pathology.

The request for renewal need not be in any particular form and shall be accompanied by the legal fee. Such fee shall be paid not later than the date of the expiration of such license, certificate, or registration, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, persons licensed, certified, or registered to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When an individual licensed, certified, or registered pursuant to the Uniform Licensing Law desires to have his or her license, certificate, or registration lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the licensee, certificate holder, or registrant in writing of the acceptance or denial of the request to allow the license, certificate, or registration to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a licensee, certificate holder, or registrant and to practice the profession in which such license is required shall terminate. To restore the license, certificate, or registration, such individual shall be required to meet the requirements for licensure, certification, or registration which are in effect at the time that he or she wishes to restore the license, certificate, or registration.

(3) When an individual licensed, certified, or registered

pursuant to the Uniform Licensing Law desires to have his or her license, certificate, or registration placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay a fee of thirty-five dollars. The department shall notify the licensee, certificate holder, or registrant in writing of the acceptance or denial of the request to allow the license, certificate, or registration to be placed on inactive status. When the license, certificate, or registration is placed on inactive status, the licensee, certificate holder, or registrant shall not engage in the practice of such profession. A license, certificate, or registration may remain on inactive status for an indefinite period of time. In order to move a license, certificate, or registration from inactive to active status, an individual shall complete the continuing education requirements in effect at the time he or she wishes to regain active status and pay the renewal fee then due.

(4) At least thirty days before the expiration of a license, certificate, or registration, the department shall notify each licensee, certificate holder, or registrant by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any licensee, certificate holder, or registrant who fails to notify the department of his or her desire to let his or her license, certificate, or registration lapse or be placed on inactive status upon its expiration or who fails to pay the renewal fee on or before the date of expiration of his or her license, certificate, or registration shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to pay, (b) that the license, certificate, or

registration has expired, (c) that the department will suspend action for thirty days following the date of expiration, (d) that upon the receipt of the renewal fee, together with an additional fee of twenty-five dollars, within that time, no order of revocation will be entered, and (e) that upon the failure to receive the amount then due and twenty-five dollars in addition to the regular renewal fee, the license, certificate, or registration will be revoked in the manner prescribed in section 71-149.

(5) Any licensee, certificate holder, or registrant who fails to renew his or her license, certificate, or registration may be reinstated upon the recommendation of the board ~~of examiners~~ for his or her profession and the payment of the renewal and any additional fees and an additional fee of fifty dollars if an application for reinstatement is made more than thirty days after expiration and not more than one year from the date of revocation.

(6) Any licensee, certificate holder, or registrant who applies for reinstatement more than one year after revocation shall pay the renewal fee and an additional fee of seventy-five dollars and petition the board ~~of examiners~~ to recommend reinstatement as prescribed in section 71-161.05.

Sec. 114. Section 71-111, Reissue Revised Statutes of Nebraska, is amended to read:

71-111. For the purpose of giving examinations to applicants for license to practice the professions for which a license is required by the Uniform Licensing Law or for the purpose of certification or registration, the State Board of Health shall appoint a board ~~of examiners~~ for each of the professions under the Uniform Licensing Law except osteopathic medicine and surgery.

Sec. 115. Section 71-112, Reissue Revised Statutes of Nebraska, is amended to read:

71-112. The boards ~~of~~ ~~examiners~~ provided in section 71-111 shall be designated as follows: For medicine and surgery and osteopathic medicine and surgery, Examiners in Medicine and Surgery; for athletic training, Examiners in Athletic Training; for respiratory care, Examiners in Respiratory Care Practice; for chiropractic, Examiners in Chiropractic; for dentistry and dental hygiene, Examiners in Dentistry; for optometry, Examiners in Optometry; for massage therapy, Examiners in Massage Therapy; for physical therapy, Examiners in Physical Therapy; for pharmacy, ~~Examiners~~ ~~in~~ Board of Pharmacy; for audiology and speech-language pathology, Examiners in Audiology and Speech-Language Pathology; for medical nutrition therapy, Examiners in Medical Nutrition Therapy; for funeral directing and embalming, Examiners in Funeral Directing and Embalming; for podiatry, Examiners in Podiatry; for psychology, Examiners of Psychologists; for veterinary medicine and surgery, Examiners in Veterinary Medicine; and for mental health practice, Examiners in Mental Health Practice.

Sec. 116. Section 71-112.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-112.03. The purpose of each board ~~of~~ ~~examiners~~ is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that licensees or certificate holders serving the public meet ~~minimum~~ standards of proficiency and competency; and (3) control their profession in the interest of consumer protection.

Sec. 117. Section 71-113, Reissue Revised Statutes of Nebraska, is amended to read:

71-113. (1) Each board ~~of examiners~~ shall consist of four members, including one layperson, except that (a) in audiology and speech-language pathology the board shall consist of five members, including one layperson, (b) in dentistry the board shall consist of ten members, including two laypersons, (c) in medicine and surgery the board shall consist of eight members, including two laypersons, (d) in pharmacy the board shall consist of five members, including ~~one layperson~~ one representative of the public and four pharmacist members, (e) in psychology the board shall consist of six members, including one layperson, (f) in medical nutrition therapy the board shall consist of five members, including two laypersons, and (g) in mental health practice the board shall consist of not more than ten members, including two laypersons.

(2) Membership on the Board of Examiners in Audiology and Speech-Language Pathology shall consist of two members who are audiologists, two members who are speech-language pathologists, and one layperson.

(3) Membership on the Board of Examiners in Athletic Training shall consist of three athletic trainers and one layperson.

(4) Membership on the Board of Examiners in Respiratory Care Practice shall consist of two respiratory care practitioners, one physician, and one layperson.

(5) Two of the six professional members of the Board of Examiners in Medicine and Surgery shall be officials or members of the instructional staff of an accredited medical school in this state.

(6) Two of the eight professional members of the Board of Examiners in Dentistry shall be dentists who are officials or members of the instructional staff of an accredited school or college of dentistry in this state, and two of the members of the board shall be dental hygienists licensed under the Uniform Licensing Law.

(7) Membership on the Board of Examiners in Medical Nutrition Therapy shall consist of two medical nutrition therapists, one physician, and two laypersons.

(8) Membership on the Board of Examiners in Mental Health Practice shall consist of not more than two certified master social workers, not more than two certified professional counselors, not more than two certified marriage and family therapists, and two laypersons. At least one professional member of the board shall be a member of a racial or ethnic minority. When ten or more persons hold licenses as mental health practitioners without holding an associated certificate, not more than two such licensed mental health practitioners shall be added to the board.

Sec. 118. Section 71-114, Reissue Revised Statutes of Nebraska, is amended to read:

71-114. (1) Except as provided in subsections (4)~~,~~ ~~(6),~~ ~~and~~ ~~(7)~~ and (6) through (9) of this section, every professional member of a board ~~of~~ ~~examiners~~ shall be and have been actively engaged in the practice of his or her profession in the State of Nebraska, under a license, certificate, or registration issued in this state, for a period of five years just preceding his or her appointment, except for the members of boards ~~of~~ ~~examiners~~ for professions coming within the scope of the Uniform Licensing Law

for the first time and for a period of five years thereafter. Members appointed during such period shall be required to meet the minimum qualifications for licensure, certification, or registration in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) A ~~layperson~~ member of a board who is a layperson or represents the public ~~of examiners~~ shall be of the age of majority and shall have been a resident of the State of Nebraska for at least five years immediately prior to appointment to the board. Such a ~~layperson~~ member shall be a representative of consumer viewpoints.

(3) Each member of the Board of Examiners in Audiology and Speech-Language Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to appointment and shall also have been engaged in rendering services to the public in audiology or speech-language pathology for at least three years immediately prior to appointment.

(4) The requirement of five years of experience shall apply to members of the Board of Examiners of Psychologists, except that up to two of the five years may have been served in teaching or research.

(5) All professional members of boards ~~of examiners~~ appointed to an initial board shall be licensed, certified, or registered within six months after being appointed to the board or within six months after the date by which members of the profession are required to be licensed, certified, or registered, whichever is later. If for any reason a professional member is not licensed,

certified, or registered within such time period, a new professional member shall be appointed.

(6) Each professional member of a board ~~of examiners~~ first appointed to the Boards of Examiners in Athletic Training, Mental Health Practice, Respiratory Care Practice, and Medical Nutrition Therapy, respectively, shall be a person who is and has been actively engaged in the practice of athletic training, mental health practice, respiratory care, or medical nutrition therapy, respectively, for at least two years immediately preceding his or her appointment to the board and shall be licensed, certified, or registered, as appropriate, within six months after being appointed or within six months after members of the profession are required to be licensed, certified, or registered, whichever is later. If for any reason a professional member cannot be licensed, certified, or registered, as appropriate, within such time period, a new professional member shall be appointed.

(7) The members initially appointed to the Board of Examiners in Mental Health Practice to fill the positions designated for certified master social workers shall be certified master social workers serving on the Board of Examiners in Social Work and to fill the positions designated for certified professional counselors shall be certified professional counselors serving on the Board of Examiners in Professional Counseling as such boards existed immediately prior to September 1, 1994.

(8) Each professional member of the Board of Pharmacy, shall at the time of appointment by the State Board of Health, (a) be a resident of this state for not less than six months immediately preceding appointment, (b) be currently licensed and in

good standing to engage in the practice of pharmacy in this state, (c) be engaged in the active practice of pharmacy in this state, and (d) have at least five years of experience engaged in the practice of pharmacy in this state after licensure.

(9) In addition to the requirements contained in subsection (2) of this section, the representative of the public on the Board of Pharmacy shall (a) not be nor have ever been a pharmacist, pharmacist intern, spouse of a pharmacist, or pharmacist intern, (b) not have or ever had any material financial interest in the provision of pharmacy services, and (c) not have engaged in any activity directly related to the practice of pharmacy. Such member shall be a representative of consumer and public viewpoints.

Sec. 119. Section 71-115.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-115.01. The department shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for members of the boards ~~of examiners~~ specified in section 71-112 and which establish procedures in the case such a conflict arises.

Sec. 120. Section 71-116, Reissue Revised Statutes of Nebraska, is amended to read:

71-116. (1) The members of each board ~~of examiners~~ shall be residents of the State of Nebraska and shall be appointed for terms of five years. Members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term. No member shall be appointed for or serve for more than two

consecutive full five-year terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

(2) The members of the Board of Examiners in Dentistry shall be appointed as follows: As of December 1, 1971, one member shall be appointed for a term of five years and one member shall be appointed for a term of three years; as of December 1, 1972, one member shall be appointed for a term of three years; as of December 1, 1973, one member shall be appointed for a term of three years; as of December 1 of each year thereafter, two members shall be appointed for terms of five years; as of December 1, 1979, one member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 shall be appointed for a term of five years; as of December 1, 1984, one layperson member shall be appointed for a term of five years; and as of December 1, 1994, a second member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 and a second layperson shall be appointed for terms of five years. Thereafter successors with like qualifications shall be appointed for five-year terms.

(3) The members of the Board of Examiners in Medicine and Surgery shall be appointed as follows: Within thirty days after May 25, 1943, five members shall be appointed, one of whom shall hold office until December 1, 1944, one until December 1, 1945, one until December 1, 1946, one until December 1, 1947, and one until December 1, 1948; upon the expiration of such terms, successors shall be appointed for terms of five years each. Within thirty days after October 19, 1963, a sixth member, who shall be a person

eligible for appointment to the Board of Examiners in Osteopathy who also has a license to practice medicine and surgery in the State of Nebraska, shall be appointed for a term expiring on December 1, 1968. As of December 1, 1984, one layperson member shall be appointed for a term of five years, and as of December 1, 1994, a second layperson shall be appointed for a term of five years. Thereafter successors with like qualifications shall be appointed for five-year terms. Upon the expiration of the five-year term of such sixth member of the board after April 19, 1986, his or her eligible successor shall be a person who has a license to practice osteopathic medicine or osteopathic medicine and surgery in the State of Nebraska.

(4) The members of the Board of Examiners in Audiology and Speech-Language Pathology shall be appointed as follows: Within sixty days after July 22, 1978, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. As of December 1, l984, one layperson member shall be appointed for a term of five years. Upon the expiration of such terms, the successors shall be appointed for terms of five years each.

(5) The Board of ~~Examiners~~ ~~in~~ Pharmacy shall be composed of five members, including four actively practicing pharmacists, at least one of whom practices ~~within~~ ~~the~~ ~~confines~~ ~~of~~ in a hospital pharmacy setting and at least one of whom practices in a community pharmacy setting, and a ~~layperson~~ ~~member~~ representative of the public who is interested in the health of the people of Nebraska and who is a representative of consumer and public viewpoints. The members of the Board of ~~Examiners~~ ~~in~~ Pharmacy shall be appointed as

follows: As of December 1, 1983, the hospital pharmacist member shall be appointed for a term of five years and the ~~layperson member~~ representative of the public shall be appointed for a term of three years. Upon the expiration of such terms and the terms of existing members, the successors shall be appointed for terms of five years each.

(6) The members of the Board of Examiners of Psychologists appointed as successors to the members serving on February 25, 1984, shall be appointed for terms of five years. The terms of members serving on February 25, 1984, are hereby extended to December 1 of the year in which they would otherwise expire.

(7) The three members serving on the Board of Examiners in Massage on August 1, 1988, shall be appointed as members of the Board of Examiners in Massage Therapy. Successors shall be massage therapists and shall be appointed for terms of five years each. One layperson member shall be appointed on December 1, 1988, for a term of five years. Upon the expiration of the layperson member's term, each subsequent layperson member shall be appointed for a five-year term.

(8) The initial members of the Board of Examiners in Mental Health Practice appointed from the Board of Examiners in Social Work and the Board of Examiners in Professional Counseling, as such boards existed immediately prior to September 1, 1994, shall serve until the expiration of the terms they would have served on their respective boards. One initial layperson member and one initial marriage and family therapist shall hold office until December 1 of the fourth year following September 1, 1994, and one initial layperson member and one initial marriage and

family therapist shall hold office until December 1 of the fifth year following September 1, 1994.

(9) The term of each member provided for in this section shall commence on the first day of December following the expiration of the term of the member whom such person succeeds and shall be rotated in such a manner that no more than one ~~examiner~~ professional member shall retire during any year in which a term expires unless the number of members on a board makes it impractical to do so.

(10) Except as otherwise specifically provided, the members of boards for professions coming under the scope of the Uniform Licensing Law for the first time shall be appointed within thirty days after the effective or operative date, whichever is later, of the act providing for licensing, certification, or registration of the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the third year, one until December 1 of the fourth year, and two, including the layperson member, until December 1 of the fifth year following the year in which the act providing for licensing, certification, or registration of the profession became effective.

Sec. 121. Section 71-117, Reissue Revised Statutes of Nebraska, is amended to read:

71-117. The regular state association or society, or its managing board, for each profession may submit each year to the State Board of Health a list of five persons of recognized ability in such profession who have the qualifications prescribed for examiners for that particular profession. ~~Each professional member~~

~~of the Board of Examiners in Pharmacy shall be the recipient of a diploma of graduation from an accredited school or college of pharmacy.~~ If such a list is submitted, the State Board of Health, in making an appointment of a professional person to the board ~~of examiners~~ for such profession, shall consider the names on such list and may appoint one of the persons so named. Any person who desires to be considered for an appointment to a board ~~of examiners~~ and who possesses the necessary qualifications for such appointment may apply ~~on a form~~ as provided by the State Board of Health any time prior to October 1 of each year. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the board, ~~of examiners,~~ even though such person is not named on a list submitted by the association or society.

Sec. 122. Section 71-118, Reissue Revised Statutes of Nebraska, is amended to read:

71-118. The State Board of Health shall have power to remove from office at any time any member of a board, ~~of examiners,~~ after a public hearing pursuant to the provisions of the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for refusal or inability for any reason to perform the duties of a board member in an efficient, responsible, and professional manner, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for misuse of office to obtain personal, financial, or material gain or advantage for a board member or another, for any cause for which a professional license, certificate, or registration in the profession involved

may be suspended or revoked under section 71-147 or 71-148, or for a lack of licensure, certification, or registration in the profession involved.

Sec. 123. Section 71-119, Reissue Revised Statutes of Nebraska, is amended to read:

71-119. Any vacancy in the membership of a board ~~of examiners~~ caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments are made.

Sec. 124. Section 71-120, Reissue Revised Statutes of Nebraska, is amended to read:

71-120. Each board ~~of examiners~~ shall organize annually at its first meeting subsequent to December 1~~,~~ and shall select a ~~chairman,~~ a ~~vice-chairman~~ chairperson, a vice-chairperson, and a secretary from its own membership. The chairperson, or the vice-chairperson in his or her absence, shall preside at all meetings of the board and shall be responsible for the performance of all duties and functions of the board required or authorized pursuant to the Uniform Licensing Law. Each additional officer selected by the board shall perform those duties normally associated with his or her position and such other duties assigned to him or her by the board. Officers elected by the board shall serve terms of one year commencing with the day of their election and ending upon election of their successors.

Sec. 125. Section 71-121, Revised Statutes Supplement, 1998, is amended to read:

71-121. (1) The department shall, as far as practicable, provide for the conducting of the business of several boards ~~of~~

~~examiners~~ by mail and may hold meetings by teleconference subject to Chapter 84, article 14. Any official action or vote of the members of a board ~~of~~ ~~examiners~~ taken by mail shall be preserved in the records of the department and shall be embodied in the proper minute book by the department.

(2) Each board shall meet at least five times annually to transact its business. The board shall meet at such additional times as it deems necessary. Such additional meetings shall be called by the chairperson of the board or by three board members.

(3) Each board shall meet at such location as it determines. The location for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.

(4) Notice of all meetings of a board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedure Act.

(5) Three board members shall constitute a quorum for the conduct of a board meeting, and except when a greater number is required by the Uniform Licensing Law or by any rule or regulation of the board, all actions of the board shall be by a majority of a quorum.

(6) All board meetings and hearings shall be open to the public pursuant to sections 84-1408 to 84-1414. The board may, in its discretion and according to law, conduct any portion of its meeting in closed executive session pursuant to section 84-1410.

Sec. 126. Section 71-121.01, Revised Statutes Supplement, 1998, is amended to read:

71-121.01. The department shall be responsible for the

general administration of the activities of each of the boards of examiners as defined in Chapter 71, articles 1, 3, 47, and 61, and the boards ~~of examiners~~ for the professions covered by the scope of the Uniform Licensing Law and named in section 71-102. The cost of operation and administration of the boards of examiners or professional boards shall be paid from fees received by the boards of examiners or professional boards. The director ~~Director of Regulation and Licensure~~ shall determine the proportionate share of this cost to be paid from the fees of the respective boards, except that no fees shall be paid for such purpose from any fund without the prior approval of the boards of examiners or professional boards concerned. The director's determinations shall become final when approved by the respective boards of examiners or professional boards and the department and shall be valid for one fiscal year only.

Sec. 127. Section 71-122, Reissue Revised Statutes of Nebraska, is amended to read:

71-122. Each member of a board ~~of examiners~~ shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting the examination, and, with the exception of board members who are laypersons or representatives of the public, for a reasonable number of days for the preparation of examination questions and the reading of the answer papers, in addition to the time actually spent in conducting the examination. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. ~~for state employees.~~ The

compensation per day in the several professions shall not exceed thirty dollars and shall be determined by each board ~~of examiners~~ with the approval of the department, except that there shall not be paid for ~~examiners'~~ members' compensation and expenses a greater sum than is received in fees from the applicants taking the examination in any particular profession.

Sec. 128. Section 71-123, Reissue Revised Statutes of Nebraska, is amended to read:

71-123. Examinations for licensure in any of the professions may be held in any suitable area approved by the department upon recommendation of the board ~~of examiners~~ in that profession.

Sec. 129. Section 71-124, Reissue Revised Statutes of Nebraska, is amended to read:

71-124. Each board ~~of examiners~~ may select one or more of its members to attend the annual meeting of the national organization of state examining boards of such profession. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meeting on the same basis as provided in sections 81-1174 to 81-1177 ~~for state employees~~ if there are funds available belonging to that board.

Sec. 130. Section 71-124.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-124.01. Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, the department may appoint a person who is actively engaged in such profession or any other qualified person who has been trained in investigational procedures and techniques to serve as

such inspector or investigator with the consent and approval of the board ~~of examiners~~ of the profession involved when applicable, except that only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy as defined in ~~subdivision (1) of~~ section ~~71-1,142~~ 173 of this act shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the Board of ~~Examiners in~~ Pharmacy.

Sec. 131. Section 71-128, Reissue Revised Statutes of Nebraska, is amended to read:

71-128. The department shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by the Uniform Licensing Law. The board ~~of examiners~~ shall make recommendations relative thereto and shall approve the list for the profession for which it gives examinations. No school shall be accredited without the formal action of the department and the board ~~of examiners~~ for the profession which that school teaches. Any professional school or college whose graduates or students desire to take the Nebraska state board examination shall supply the department with the necessary data to allow the board ~~of examiners~~ and the department to determine whether that school should be accredited. The department may adopt any national examination to constitute part of or all of the licensure or certification examination for any of the professions which are regulated by the Uniform Licensing Law. Such examination shall be approved by the board ~~of examiners~~ for the profession involved as being a part of or all of the examination for licensure or certification.

Sec. 132. Section 71-129, Reissue Revised Statutes of

Nebraska, is amended to read:

71-129. Examinations for licensure or certification shall be held on such dates and at such times and places as the department or the organization specified by the department may set. Such dates, times, and places as set by the department shall not exceed four in any one year except (1) as provided in section 71-133 for dentistry or (2) in those professions when nonpractical examinations are available for administration by either computers or in written form on a more frequent basis. Examinations may be held in any college or program or at any other location as determined by the department or the organization specified by the department. Any examination may be held concurrently in two or more places to accommodate the applicants therefor. Special examinations may be given at the expense of the applicant and administered by the department, the organization specified by the department, or the board ~~of examiners~~ in that particular profession.

Sec. 133. Section 71-131, Reissue Revised Statutes of Nebraska, is amended to read:

71-131. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The department may, upon the recommendation of the appropriate board, ~~of examiners,~~ adopt and promulgate rules and regulations to specify the passing grade on licensure or certification examinations. In the absence of such rules and regulations, an examinee shall be required to obtain an average grade of seventy-five and shall be required to obtain a grade of sixty in each subject examined;

(b) A person who desires to take a licensure or certification examination but does not wish to receive a license or certification may take such examination by meeting the examination eligibility requirements and paying the cost of the examination and an administrative fee of twenty-five dollars; and

(c) An examinee who fails a licensure or certification examination may retake the entire examination or the part failed upon payment of the licensure or certification fee each time he or she is examined. The department shall withhold from the licensure or certification fee the cost of any national examination used and the administrative fee authorized in section 71-163 when an examinee fails a licensure or certification examination and shall return to the examinee the remainder of the licensure or certification fee collected, except that:

(i) If the state-developed jurisprudence portion of the licensure or certification examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for purchasing such examination.

(2) In pharmacy, all applicants shall be required to attain a grade to be determined by the Board of ~~Examiners~~ ~~in~~ Pharmacy in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

(3) In social work, the passing criterion for such examination shall be established and may be changed by the Board of Examiners in Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or

she meets all the requirements for certification without examination pursuant to section 71-1,319 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) In professional counseling, the passing criterion for such examination shall be established and may be changed by the Board of Examiners in Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(5) In marriage and family therapy, the passing criterion for such examination shall be established and may be changed by the Board of Examiners in Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 71-1,329 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(6) Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination must be successfully completed within seven years. An applicant who fails to successfully complete the

licensing examination within seven years shall retake that part of the examination which is more than seven years old.

(7) In medical nutrition therapy, the passing criterion for such examination shall be established and may be changed by the Board of Examiners in Medical Nutrition Therapy by rule and regulation. Such examination shall test for the essential clinical elements of the field of medical nutrition therapy. The board shall base its actions on broad categorical parameters derived from the essential elements of the field of medical nutrition therapy. It shall not endorse nor restrict its assessment to any particular nutritional school of thought in its selection of examinations, passing criterion for such examinations, evaluation of credentials, approval of continuing education hours, application of practice standards, or in any other actions. The board may exempt an applicant from the written examination if he or she meets all of the requirements for licensure without examination pursuant to section 71-1,291 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

Sec. 134. Section 71-132, Reissue Revised Statutes of Nebraska, is amended to read:

71-132. All examinations in theory shall be in writing, and the identity of persons taking the same shall not be disclosed upon the examination paper in such a way as to enable the board ~~of examiners~~ to know by whom written. In examinations in practice, the identity of the candidate shall also be concealed as far as possible, and the board members shall in every way endeavor to carry out the spirit of this section.

Sec. 135. Section 71-138, Reissue Revised Statutes of

Nebraska, is amended to read:

71-138. (1) All question and answer sheets connected with any examination for licensure or certification shall be maintained by the department, national organization, or testing service for a period of two years from the date of administration of the examination. When national examinations that are governed by security considerations are utilized, they shall be available from the developing testing service for a period of two years, during which time such question and answer sheets shall be open to inspection by an applicant or his or her designee. Question and answer sheets for any national machine-graded or computer-scored examination which are protected by security agreements, copyright provisions, or departmental or state contractual agreements for use shall not be required to be on file with the department but shall be available for a period of two years, upon demand, from any testing service utilized, at the discretion of the department or upon order of a court of competent jurisdiction.

(2) The department, upon the recommendation of the board, ~~of examiners,~~ may adopt and promulgate rules and regulations:

(a) To specify eligibility for taking the licensure or certification examination. In determining such eligibility, the department and the board shall consider the practices of other states and the promotion of reciprocal relations but shall determine such eligibility standards based on the extent to which completion of a course of study prior to examination is necessary to assure that applicants for licensure or certification meet minimum standards of proficiency and competency for the protection of the health and safety of the public;

(b) To specify licensure or certification examination application procedures, including the date, time, and place of examination and the deadline for making such application;

(c) To provide for the review of procedures for the development of examinations;

(d) To govern the administration of all or separate components of examinations for licensure or certification;

(e) To protect the security of the content of examination questions and answers; and

(f) To provide for the review of the examination question and answer sheets by examinees who fail the licensure or certification examinations or their designees.

The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from that service detailed documentation of the process of examination development and maintenance.

Sec. 136. Section 71-139, Reissue Revised Statutes of Nebraska, is amended to read:

71-139. The department may, without examination, except when a practical examination is required, issue a license to practice any profession, except pharmacy, podiatry, dentistry, medicine and surgery, optometry, osteopathic medicine and surgery or as an osteopathic physician, and audiology and speech-language pathology, to a person who has been in the active practice of that profession in some other state or territory or the District of Columbia upon the certificate of the proper licensing authority of the state, territory, or District of Columbia certifying that the applicant is duly licensed, that his or her license has never been

suspended or revoked, and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement.

The applicant shall also present proof of the following things:

(1) That the state, territory, or District of Columbia from which the applicant comes shall have and maintain standards regulating his or her profession equal to those maintained in that profession by Nebraska;

(2) That his or her license there was based upon a written examination and the grades given at such examination;

(3) The date of his or her license;

(4) That such licensee has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity;

(5) The affidavit of at least two practitioners in that state or territory or the District of Columbia testifying to the applicant being of good moral character and standing in his or her profession; and

(6) That the applicant has been in the active and continuous practice under license by examination in the state, territory, or District of Columbia from which he or she comes for at least one year.

An applicant for reciprocal registration coming from any state may be licensed by reciprocity if his or her individual qualifications meet the Nebraska legal requirements.

The department may issue certificates or registrations on

a reciprocal basis to persons who are required to be certified or registered pursuant to the Uniform Licensing Law. The department may adopt and promulgate rules and regulations for reciprocity pursuant to this section.

Persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Examiners in Osteopathy since January 1, 1963, and prior to May 23, 1981, and after May 23, 1981, persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Examiners in Medicine and Surgery who meet the requirements of this section and who have passed a written examination which is equivalent to that required in section 71-1,104 as determined by the Board of Examiners in Medicine and Surgery and who meet the requirements of section 71-1,137 for the practice of osteopathic medicine and surgery as evidenced by a certificate of the Board of Examiners in Medicine and Surgery may be granted a license to practice osteopathic medicine and surgery as defined in section 71-1,137 if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. Graduates of an accredited school or college of osteopathic medicine since January 1, 1963, who meet the requirements of this section and who meet the applicable requirements of section 71-1,139.01 as certified by the Board of Examiners in Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

The department may approve without examination any person

who has been duly licensed to practice optometry in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the Board of Examiners in Optometry shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice optometry if such person has been actively engaged in the practice under such license for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession certifying that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found to meet the requirements provided in this section and is qualified to be licensed to practice the profession of optometry in the State of Nebraska, the board shall issue a license to practice optometry in the State of Nebraska to such applicant.

The Board of Examiners in Dentistry may approve any person who has been duly licensed to practice dentistry or dental hygiene in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice dentistry or dental hygiene if such person has been

actively engaged in the practice under such license or in an accepted residency or graduate training program for at least three years, one of which must be within the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession certifying that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. The applicant shall submit evidence of completion during the twelve-month period preceding the application of continuing education requirements comparable to the requirements of this state. The board of examiners may administer an oral examination to all applicants for licensure by reciprocity to assess their knowledge of basic clinical aspects of dentistry or dental hygiene. If the applicant is found by the board to meet the requirements provided in this section, the board shall certify such fact to the department, and the department upon receipt of such certification shall issue a license to practice dentistry or dental hygiene in the State of Nebraska to such applicant. If the board finds that the applicant does not satisfy the requirements of this section, the board shall certify its findings to the department. The director ~~Director of Regulation and Licensure~~ shall review the findings and shall, if in

agreement with the findings, deny the application.

Sec. 137. Section 71-140, Reissue Revised Statutes of Nebraska, is amended to read:

71-140. The Board of ~~Examiners~~ ~~in~~ Pharmacy may recommend to the department ~~Department~~ ~~of~~ ~~Health~~ ~~and~~ ~~Human~~ ~~Services~~ ~~Regulation~~ ~~and~~ ~~Licensure~~ the ~~registration~~ licensure as a pharmacist, without examination, of any person who is duly ~~so~~ ~~registered~~ licensed by examination in some other state or jurisdiction in which, under like conditions, ~~reciprocal~~ ~~registration~~ licensure as a pharmacist, without examination, is granted to pharmacists duly ~~registered~~ licensed by examination in this state or jurisdiction. The applicant shall produce evidence satisfactory to the board of having had the required secondary and professional education and training, of having been ~~actively~~ ~~engaged~~ ~~in~~ ~~the~~ ~~practice~~ ~~under~~ ~~such~~ ~~registration~~ ~~or~~ ~~in~~ ~~an~~ ~~accepted~~ ~~residency~~ ~~or~~ ~~graduate~~ ~~training~~ ~~program~~ ~~for~~ ~~at~~ ~~least~~ ~~one~~ ~~of~~ ~~the~~ ~~three~~ ~~years~~ ~~immediately~~ ~~preceding~~ ~~the~~ ~~application~~ ~~for~~ ~~reciprocal~~ ~~registration~~ a licensed pharmacist in good standing in another state or jurisdiction, and of ~~being~~ ~~possessed~~ ~~of~~ having good character and morals, as demanded of applicants for ~~registration~~ licensure under sections 71-1,142 to 71-1,147. Persons of good character who have become licensed or registered as pharmacists by examination in other states prior to September 1, 1939, shall be required to meet only the requirements which existed in this state at the time when they became licensed or registered in such other state.

Sec. 138. Section 71-141, Revised Statutes Supplement, 1998, is amended to read:

71-141. In order that the ~~Department of Health and Human Services Regulation and Licensure~~ department may determine the standards established by law and by rule in the other states or jurisdictions, the ~~Director of Regulation and Licensure~~ director, or some other person authorized by the director, shall gather information from other states or jurisdictions bearing upon this point. The applicant shall, upon the request of the department, be responsible for securing information from the proper authority of the place from which he or she comes, of the standards maintained there, and the laws and rules relating thereto. In determining these standards, the department shall submit to the interested board ~~of examiners~~ any question that requires the exercise of expert knowledge.

Sec. 139. Section 71-143, Reissue Revised Statutes of Nebraska, is amended to read:

71-143. In those professions requiring a practical examination in connection with the admission of applicants from other states or jurisdictions without general examination, if the board ~~of examiners~~ in the interested profession is not expected to be in session within thirty days, the ~~Department of Health and Human Services Regulation and Licensure~~ department may ask at least one-third of that board to give a special examination~~,~~ and may fix their reasonable compensation therefor~~,~~ in addition to their traveling expenses.

Sec. 140. Section 71-144, Reissue Revised Statutes of Nebraska, is amended to read:

71-144. The ~~Department of Health and Human Services Regulation and Licensure~~ department, with the consent of the

interested board, ~~of examiners,~~ shall have power to establish the necessary rules, not inconsistent with the law, to carry out the reciprocal relations with other states or jurisdictions which are authorized ~~herein~~ in the Uniform Licensing Law.

Sec. 141. Section 71-147, Revised Statutes Supplement, 1998, is amended to read:

71-147. A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, certificate holder, or registrant is guilty of any of the following acts or offenses:

(1) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license, certificate, or registration;

(2) Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;

(3) Habitual intoxication or active dependency on or addiction to the use of alcohol or habituation or active dependency on or addiction to the use of any kind of controlled substance or narcotic drug or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to section 71-172.01;

(4) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with

the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession;

(5) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct shall mean a continued course of negligent conduct in performing the duties of the profession;

(6) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;

(7) Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;

(8) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate, or registration by a person not licensed, certified, or registered to do so;

(9) Having had his or her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had such license, certificate, or registration disciplined in any other manner in accordance with section 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license,

certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence;

(10) Unprofessional conduct;

(11) Use of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims, concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements;

(12) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(13) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(14) Willful or repeated violations of the Uniform Licensing Law or the rules and regulations of the department relating to the licensee's, certificate holder's, or registrant's profession, sanitation, quarantine, or school inspection;

(15) Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice;

(16) Failure to comply with sections 71-604, 71-605, and 71-606 relating to the signing of birth and death certificates;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;

(19) Violation of the Emergency Box Drug Act;

(20) Failure to file a report required by section 71-168;

(21) Failure to disclose the information required by section 71-1,314.01; ~~or~~

(22) Failure to disclose the information required by section 71-1,319.01;

(23) Failure to honor a subpoena issued by the department; or

(24) Failure to provide information or cooperate in investigations pursuant to section 71-168.

A license, certificate, or registration to practice a profession may also be refused renewal or revoked when the licensee, certificate holder, or registrant is guilty of practicing such profession while his or her license, certificate, or registration to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his or her license, certificate, or registration.

This section shall not apply to revocation for nonrenewal as set out in section 71-110, subsection (1) of section 71-149, and section 71-161.10.

Sec. 142. Section 71-148, Revised Statutes Supplement, 1998, is amended to read:

71-148. For purposes of section 71-147, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or occupation or the ethics of the profession or occupation, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is

detrimental to the public interest, including, but not limited to:

(1) Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers; ~~, or profiting by the acts of those representing themselves to be agents of the licensee, certificate holder, or registrant;~~

(2) Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;

(3) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient, except as applicable to services provided under a managed care plan;

(4) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(5) Cheating on or attempting to subvert the licensing or certification examination;

(6) Assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative;

(7) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which he or she is not licensed, certified, or registered;

(8) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(9) ~~Willful betrayal of a professional secret except as otherwise provided by law;~~

~~(10)~~ Making use of any advertising statements of a character tending to deceive or mislead the public;

~~(11)~~ (10) Advertising professional superiority or the performance of professional services in a superior manner;

~~(12)~~ (11) Advertising to guarantee any professional service or to perform any operations painlessly;

~~(13)~~ (12) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

~~(14)~~ (13) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908;

~~(15)~~ (14) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (9) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

~~(16)~~ (15) The providing by a massage therapist of sexual stimulation as part of massage therapy;

~~(17)~~ (16) Violating an assurance of compliance entered into under section 71-171.02;

~~(18)~~ (17) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession or occupation of the applicant, licensee, certificate holder, or registrant;

~~(19)~~ (18) Failure to keep and maintain adequate records of treatment or service;

~~(20)~~ (19) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

~~(21)~~ (20) Prescribing any controlled substance to oneself or, except in the case of a medical emergency, to one's spouse or child; and

~~(22)~~ (21) Such other acts as may be defined in rules and regulations adopted and promulgated by the department upon recommendation of the board ~~of examiners~~ in the profession of the applicant, licensee, certificate holder, or registrant. ~~with the approval of the department.~~

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Sec. 143. Section 71-150, Reissue Revised Statutes of Nebraska, is amended to read:

71-150. (1) The ~~Director of Regulation and Licensure~~ director shall have jurisdiction of proceedings (a) to deny the issuance of a license, certificate, or registration, (b) to refuse renewal of a license, certificate, or registration, and (c) to discipline a licensee, certificate holder, or registrant.

(2) To deny or refuse renewal of a license, certificate, or registration, the department shall send the applicant, licensee, certificate holder, or registrant, by registered or certified mail, notice setting forth the action taken and the reasons for the

determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant, licensee, certificate holder, or registrant, within such thirty-day period, gives written notice of his or her desire for a hearing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

(3) In order for the director to discipline a licensee, certificate holder, or registrant, a petition shall be filed by the Attorney General in all cases. The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

Sec. 144. Section 71-151, Revised Statutes Supplement, 1998, is amended to read:

71-151. The Attorney General shall comply with such directions of the ~~Department of Health and Human Services Regulation and Licensure~~ department or of the ~~Director of Regulation and Licensure~~ director and prosecute such action on behalf of the state, but the county attorney of any county where a licensee, certificate holder, or registrant has practiced, at the request of the Attorney General or of the department, shall appear and prosecute such action.

Sec. 145. Section 71-153, Reissue Revised Statutes of Nebraska, is amended to read:

71-153. Upon the presentation of the petition to the ~~Director of Regulation and Licensure~~ director, he or she shall make

an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Sec. 146. Section 71-155, Revised Statutes Supplement, 1998, is amended to read:

71-155. The proceeding under section 71-150 shall be summary in its nature and triable as an equity action and shall be heard by the ~~Director of Regulation and Licensure~~ director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held under this section, the director shall, if the petition is brought with respect to subdivision (15) of section 71-148, make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, and shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

(1) Issue a censure or reprimand against the licensee, certificate holder, or registrant;

(2) Suspend judgment;

(3) Place the licensee, certificate holder, or registrant

on probation;

(4) Place a limitation or limitations on the license, certificate, or registration and upon the right of the licensee, certificate holder, or registrant to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper;

(5) Impose a civil penalty not to exceed ten thousand dollars. The amount of the penalty shall be based on the severity of the violation;

(6) Enter an order of suspension of the license, certificate, or registration;

(7) Enter an order of revocation of the license, certificate, or registration; and

(8) Dismiss the action.

If the director determines that guilt has been established, the director may, at his or her discretion, consult with the board ~~of examiners~~ for the profession involved concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a board, ~~of examiners,~~ the licensee or certificate holder shall be provided with a copy of the director's request, the recommendation of the board, ~~of examiners,~~ and an opportunity to respond in such manner as the director determines.

The licensee, certificate holder, or registrant shall not engage in the practice of a profession after a license, certificate, or registration to practice such profession is revoked or during the time for which it is suspended. If a license, certificate, or registration is suspended, the suspension shall be

for a definite period of time to be set by the director. The director may provide that the license, certificate, or registration shall be automatically reinstated upon expiration of such period, reinstated if the terms and conditions as set by the director are satisfied, or reinstated subject to probation or limitations or conditions upon the practice of the licensee, certificate holder, or registrant. If such license, certificate, or registration is revoked, such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 71-161.04.

Sec. 147. Section 71-155.01, Revised Statutes Supplement, 1998, is amended to read:

71-155.01. If a chief medical officer is appointed pursuant to section 81-3201, he or she shall perform the duties of the ~~Director of Regulation and Licensure~~ director for decisions in contested cases under sections 71-150, 71-153 to 71-155, 71-156, 71-161.02, 71-161.03, 71-161.07, 71-161.11 to 71-161.15, 71-161.17, 71-161.18, 71-161.20, 71-1,104, ~~71-1,142,~~ 71-1,147.08, 71-1,147.10, 71-1,147.31, ~~71-1,147.44, 71-1,147.45,~~ 71-1,147.48, 71-1,147.53, 71-1,147.59, and 71-1,232.

Sec. 148. Section 71-156, Reissue Revised Statutes of Nebraska, is amended to read:

71-156. In case the licensee, certificate holder, or registrant fails to appear, either in person or by counsel at the time and place designated in the notice required by section 71-154, the ~~Director of Regulation and Licensure~~ director after receiving satisfactory evidence of the truth of the charges shall order the license, certificate, or registration revoked or suspended or shall

order any or all of the other appropriate disciplinary measures authorized by section 71-155 to be taken against the licensee, certificate holder, or registrant.

Sec. 149. Section 71-161.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.02. The authority of the ~~Director of Regulation and Licensure~~ director to discipline a licensee, certificate holder, or registrant by placing him or her on probation pursuant to section 71-155 shall include, but not be limited to, the following:

(1) To require the licensee, certificate holder, or registrant to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;

(2) To require the licensee, certificate holder, or registrant to submit to a complete diagnostic examination by one or more physicians appointed by the director. If the director requires the licensee, certificate holder, or registrant to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians of the licensee's, certificate holder's, or registrant's choice if the licensee, certificate holder, or registrant chooses to make available such a report or reports by his or her physician or physicians; and

(3) To limit the extent, scope, or type of practice of

the licensee, certificate holder, or registrant.

Sec. 150. Section 71-161.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.03. (1) Any petition filed with the ~~Director of Regulation and Licensure~~ director pursuant to section 71-150 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate board ~~of examiners~~ to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the

Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board ~~of examiners~~ as provided in subsection (1) of this section, the licensee or certificate holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Sec. 151. Section 71-161.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.04. (1) A person licensed, certified, or registered by the department whose license, certificate, or registration has been suspended or has had limitations placed thereon for any reason specified in sections 71-147 and 71-148 may petition the board ~~of examiners~~ in the profession of the petitioner to recommend the reinstatement of the license, certificate, or registration at any time.

(2) A person licensed, certified, or registered by the department whose license, certificate, or registration has been revoked for any reason specified in such sections may petition the board ~~of examiners~~ to recommend reinstatement after a period of two years has elapsed from the date of revocation.

Sec. 152. Section 71-161.07, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.07. Each board ~~of examiners~~ shall make a recommendation to the ~~Director of Regulation and Licensure~~ director regarding reinstatement following disciplinary action within the board's profession. In determining whether reinstatement should be recommended, the board (1) may request the department to investigate the petitioner to determine if the petitioner has

committed acts or offenses prohibited by sections 71-147 and 71-148, (2) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and to make available a report or reports thereof to the board, and (3) may require the petitioner to pass a written, oral, or practical examination or any combination of such examinations.

The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a license, certificate, or registration with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to section 71-161.04 when the petitioner has been afforded a hearing or an opportunity for a hearing upon any such petition within a period of two years immediately preceding the filing of such petition.

Denial by the board of the petition for recommendation of reinstatement of the license or certificate may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 153. Section 71-161.09, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.09. The board ~~of examiners~~ for any profession or occupation licensed, certified, or registered by the department pursuant to Chapter 71, with the approval of the department, may adopt and promulgate, by rules and regulations, standards of

relicensure, recertification, and reregistration for each Nebraska-licensed, Nebraska-certified, and Nebraska-registered practitioner of such profession or occupation in active practice within the State of Nebraska, including telehealth. Such regulations may include methods for demonstrating continued competency or the prescribed number of hours which are to be attained biennially for receiving continuing education information presented by or in the form of board-approved scientific schools, clinics, forums, lectures, courses of study, home study courses, or educational seminars relating to the practice of such profession or occupation and held within or outside the state. The board and the department shall consult with the appropriate professional academies, professional societies, and professional associations in the development of such standards. The purpose of any such action by such board shall be to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive service to the public. The number of hours that may be required shall be prescribed by the board in such rules and regulations. ~~for any calendar year.~~ In no instance may the board require a greater number of hours of approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars than are available at approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars held within the State of Nebraska.

Sec. 154. Section 71-161.10, Revised Statutes Supplement, 1998, is amended to read:

71-161.10. (1) Upon the establishment of such standards

for relicensure, recertification, or reregistration by any board, ~~of examiners,~~ by rule and regulation, and with the approval of the department, each licensed, certified, or registered practitioner of such profession or occupation in active practice within the state shall, on or before the date of expiration of his or her license, certificate, or registration in the year the requirement applies, certify on an affidavit form provided by the board ~~of examiners~~ of the profession or occupation concerned that he or she has complied with section 71-161.09 during the preceding two-year period. Such board shall, on or before the date of expiration of the license, certificate, or registration in the year the requirement applies, report all licensees, certificate holders, or registrants who have complied with the educational requirements to the ~~Department of Health and Human Services Regulation and Licensure~~ department. Licensees, certificate holders, or registrants who have not complied with such requirement shall not be issued a renewal license, certificate, or registration unless such requirements are waived or unless such licensees, certificate holders, or registrants are unable to comply due to circumstances beyond their control. Procedures for nonrenewal of the license, certificate, or registration of such licensees, certificate holders, or registrants due to failure to submit proof of continuing education shall be identical to those for nonpayment of renewal fees as provided in sections 71-110 and 71-149, as well as procedures for reinstatement of the same. In cases other than nonrenewal, the procedures in sections 71-149 and 71-150 for refusal to renew shall apply. The department, on the recommendation of the board ~~of examiners~~ of the licensee's, certificate holder's, or registrant's profession, may

waive continuing education requirements, in part or in total, for any two-year licensing, certification, or registration period when a licensee, certificate holder, or registrant submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(a) The licensee, certificate holder, or registrant holds a Nebraska license, certificate, or registration but is not practicing his or her profession or occupation in Nebraska;

(b) The licensee, certificate holder, or registrant has served in the regular armed forces of the United States during part of the twenty-four months immediately preceding the renewal date;

(c) The licensee, certificate holder, or registrant has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the twenty-four months immediately preceding the renewal date; and

(d) The licensee, certificate holder, or registrant was first licensed, certified, or registered within the twenty-four months immediately preceding the renewal date.

The department, with the consent of the interested board, ~~of examiners,~~ may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

(2) Each licensee, certificate holder, or registrant shall provide a sworn affidavit listing continuing education activities in which he or she participated or attended, the amount of credit received for each activity, and the date, location, and

name of the approved provider which sponsored the activity on a separate form or portion of the renewal application as may be designed by the department. Each licensee, certificate holder, or registrant shall be responsible for maintaining in his or her personal files such certificates or records of credit from continuing education activities received from approved providers.

The appropriate examining board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing education credits. Each licensee, certificate holder, or registrant selected for audit shall be required to produce documentation of his or her attendance at the continuing education seminars listed on his or her renewal application.

Sec. 155. Section 71-161.12, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.12. In addition to the grounds for denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as otherwise provided by law, a license, certificate, or registration to practice any profession or occupation regulated by the ~~Department of Health and Human Services Regulation and Licensure~~ department pursuant to Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the ~~Director of Regulation and Licensure~~ director when the applicant, licensee, certificate holder, or registrant is found to be not qualified to practice the particular profession or occupation for which he or she is applying, licensed, certified, or registered because of habitual intoxication or dependence on or active addiction to alcohol or any controlled substance or narcotic drug, physical or mental illness, or physical or mental

deterioration or disability.

Sec. 156. Section 71-161.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.13. When any complaint has been filed ~~in the office of the Department of Health and Human Services Regulation and Licensure~~ with the department by any person or any report has been made to the ~~Director of Regulation and Licensure~~ director by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a license, certificate, or registration or a person licensed, certified, or registered to practice any profession or occupation in the state regulated by the ~~Department of Health and Human Services Regulation and Licensure~~ department pursuant to Chapter 71 is suffering from habitual intoxication or dependence~~, on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability, the ~~Director of Regulation and Licensure~~ director shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant, licensee, certificate holder, or registrant to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant, licensee, certificate holder, or registrant to practice such profession or occupation because of habitual intoxication or dependence~~, on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or

disability, he or she shall report such finding and evidence supporting it to the board ~~of examiners~~ in the profession or occupation of the applicant, licensee, certificate holder, or registrant, and if such board agrees that reasonable cause exists to question the qualification of such applicant, licensee, certificate holder, or registrant, it shall appoint a committee of three qualified physicians to examine the applicant, licensee, certificate holder, or registrant and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant, licensee, certificate holder, or registrant, by the director, or by any other person and shall then determine if the applicant, licensee, certificate holder, or registrant is qualified to practice or to continue to practice such profession or occupation in ~~the State of Nebraska~~ this state. If such board finds the applicant, licensee, certificate holder, or registrant to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence~~, on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability, it shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such license, certificate, or registration. The director ~~shall~~ may thereupon deny, refuse renewal of, suspend, or revoke the license, certificate, or registration, or limit the license, certificate, or registration of the licensee, certificate holder, or registrant to

practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Sec. 157. Section 71-161.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.14. The denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the board ~~of examiners~~ in the profession or occupation of the applicant, former licensee, certificate holder, or registrant, or licensee, certificate holder, or registrant finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former licensee, certificate holder, or registrant, or licensee, certificate holder, or registrant is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly licensed, certified, or registered, or for which he or she was licensed, certified, or registered subject to limitation and certifies that fact to the ~~Director of Regulation and Licensure~~ director. Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such license, certificate, or registration or remove any limitation on such license, certificate, or registration if the person is otherwise qualified as determined by the board ~~of examiners~~ in the relevant profession or occupation to practice or to continue in the practice of such profession or occupation.

Sec. 158. Section 71-161.15, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.15. Refusal of an applicant, licensee, certificate holder, or registrant to submit to a physical or mental examination requested by the board ~~of examiners~~ in the relevant profession or occupation pursuant to sections 71-161.12 to 71-161.16 to determine his or her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which he or she is licensed, certified, or registered by the ~~Department of Health and Human Services Regulation and Licensure~~ department pursuant to the provisions of Chapter 71 shall be just cause for denial of the application or for refusal of renewal or suspension of his or her license, certificate, or registration automatically by the director until such examination has been made.

Sec. 159. Section 71-161.17, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.17. (1) The license, certificate, or registration of any person to practice any profession or occupation licensed, certified, or registered by the ~~Department of Health and Human Services Regulation and Licensure~~ department pursuant to the provisions of Chapter 71 shall be suspended automatically if he or she is determined by legal process to be mentally ill.

(2) A certified copy of the document evidencing that such a licensee, certificate holder, or registrant has been determined by legal process to be mentally ill shall be transmitted to the ~~Director of Regulation and Licensure~~ director as soon as possible following such determination.

(3) A suspension under this section may be terminated by the ~~Director of Regulation and Licensure~~ director when he or she receives competent evidence that such former practitioner is not or is no longer mentally ill and is otherwise satisfied, with due regard for the public interest, that such former practitioner's license, certificate, or registration to practice may be restored.

Sec. 160. Section 71-161.19, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.19. ~~No~~ Any member of a board ~~of examiners~~ for any profession or occupation licensed or certified by the ~~Department of Health and Human Services Regulation and Licensure~~ department pursuant to the provisions of Chapter 71, any member of a profession or occupation providing consultation or testimony for the department, or any expert retained by any board, shall not be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken, consultation provided, testimony given, or recommendation made within the scope of the functions of such board, if such board member, consultant, testifier, or expert acts without malice and in the reasonable belief that such action, consultation, testimony, or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, consultation is provided, testimony is given, or recommendation is made.

Sec. 161. Section 71-161.20, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.20. (1) An applicant may apply to the ~~Director of Regulation and Licensure~~ director for reinstatement only with an

affirmative recommendation of the appropriate board, ~~of examiners,~~ and such application to the director may not be received or filed by the director unless accompanied by (a) the written recommendation of the board, including any finding of fact or order of the board, (b) the application submitted to the board, (c) the record of hearing if any, and (d) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the petitioner.

(2) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (a) in excess of statutory authority, (b) made upon unlawful procedure, (c) unsupported by competent, material, and substantial evidence in view of the entire record, or (d) arbitrary or capricious.

Sec. 162. Section 71-162, Revised Statutes Supplement, 1998, is amended to read:

71-162. (1) The following fees shall be collected by the department and remitted to the State Treasurer:

(a) Not less than fifty dollars and not more than three hundred dollars for a license issued on the basis of an examination given by the department or organization specified by the department or for a license issued by reciprocity to practice audiology, athletic training, chiropractic, dental hygiene, dentistry, funeral directing and embalming, massage therapy, optometry, pharmacy, physical therapy, podiatry, respiratory care, speech-language pathology, veterinary medicine, or mental health practice, except that the fee for a provisional mental health practitioner license

is as prescribed in subdivision (i) of this subsection;

(b) Not less than one hundred dollars and not more than six hundred dollars for a license issued on the basis of examination or by reciprocity to practice psychology;

(c) Not less than three hundred dollars and not more than seven hundred seventy-five dollars for a license issued on the basis of examination given by the department or organization specified by the department to practice medicine and surgery or osteopathic medicine, and not less than two hundred dollars and not more than five hundred dollars for a license issued by reciprocity to practice medicine and surgery or osteopathic medicine;

(d) For issuance or renewal of a certificate as a certified professional counselor or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(e) For issuance or renewal of a certificate as a certified social worker or a certified master social worker, for issuance of a provisional certification as a master social worker, or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(f) For issuance or renewal of a certificate as a certified marriage and family therapist or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(g)(i) For a license to operate a massage therapy school, not less than one hundred dollars and not more than three hundred dollars, and for renewal of a license, not less than one hundred dollars and not more than four hundred dollars, and (ii) for a

license to operate a massage therapy establishment, not less than one hundred dollars and not more than three hundred dollars, and for renewal of a license, not less than one hundred dollars and not more than four hundred dollars;

(h) For a license as a licensed medical nutrition therapist, not less than fifty dollars and not more than three hundred dollars. The fee for renewal of a license as a licensed medical nutrition therapist shall be not less than twenty dollars and not more than five hundred dollars. The fee for licensure by reciprocity shall be not less than fifty dollars and not more than three hundred dollars;

(i) For issuance of a provisional mental health practitioner license, not less than twenty-five dollars and not more than one hundred dollars;

(j) For the biennial renewal of a license to practice medicine and surgery, osteopathic medicine, psychology, or any of the professions enumerated in subdivision (a) of this subsection, not less than twenty dollars and not more than five hundred dollars;

(k) For a certified statement that a licensee, certificate holder, or registrant is licensed, certified, or registered in this state, twenty-five dollars, and for verification that a licensee, certificate holder, or registrant is licensed, certified, or registered in this state, five dollars; and

(l) For a duplicate original or reissued license, certificate, or registration, ten dollars.

All money paid as licensure, certification, registration, and renewal fees shall be kept in a separate fund to be used for

the benefit of the profession so paying such fees.

(2) The department, upon the recommendation of the appropriate board, ~~of examiners,~~ shall adopt and promulgate rules and regulations to specify the fee to be charged for the cost of the licensure or certification examination, for licensure or certification, and for licensure or certification renewal in each profession enumerated in subsection (1) of this section. The fee for the licensure or certification examination shall not exceed the cost of such examination.

Sec. 163. Section 71-168, Revised Statutes Supplement, 1998, is amended to read:

71-168. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every licensee, certificate holder, or registrant listed under subsection (4) of this section and every member of a board ~~of examiners~~ shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every licensee, certificate holder, or registrant listed under subsection (4) of this section shall report to the department the name of every person without a license, certificate, or registration that he or she has reason to believe is engaged in practicing any profession for which a license, certificate, or registration is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The board ~~of examiners~~ for the profession may issue an order to cease and desist the unauthorized

practice of that profession as a measure to obtain licensure, certification, or registration of the person prior to referral of the matter to the Attorney General for action.

(3) Any licensee, certificate holder, or registrant listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every licensee, certificate holder, or registrant regulated under the Advanced Registered Nurse Practitioner Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions

governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the practitioner, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a chemically impaired professional enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a practitioner refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of licensure, certification, registration, or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any license, certificate, registration, or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such license, certificate, registration, or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal

or military jurisdiction.

(5) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Sec. 164. Section 71-168.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-168.01. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Licensing Law or rules and regulations issued under such law. The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the

authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate board ~~of examiners~~ may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(3) A board ~~of examiners~~ may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation

shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

(4) The department may notify the licensee, certificate holder, or registrant that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

(5) The department shall advise the appropriate board ~~of examiners~~ on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board. When the department determines that an investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the licensee, certificate holder, or registrant that may be relevant to the investigation, except that reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release to the board and reports provided by any other agency or public or private entity, which reports are confidential in that agency's or entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review. The recommendation of the board shall be made part of the completed investigational report of the department and submitted to

the Attorney General. The recommendation of the board shall include, but not be limited to:

(a) The specific violations of statute, regulation, or both that the board finds substantiated based upon the investigation;

(b) Matters which the board believes require additional investigation; and

(c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(6) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(7) Complaints, investigational records, reports, and files of any kind shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such complaints, investigational records, reports, and files shall be a public record if made part of the record of a contested case. No person, including, but not limited to, department employees and members of a board, having access to complaints, investigational records, reports, or files shall disclose such records or information in violation of this section, except that the department is authorized to cooperate with federal, state, and local law enforcement agencies and other federal and state agencies to exchange information and evidence in the discharge of their duties. Violation of this subsection shall

be a Class I misdemeanor.

(8) All meetings of the boards ~~of~~ ~~examiners~~ or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Sec. 165. Section 71-168.02, Revised Statutes Supplement, 1998, is amended to read:

71-168.02. (1) A health care facility licensed under section 71-2017.01 or a peer review organization or professional association of a health care profession regulated under the Advanced Registered Nurse Practitioner Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or

(b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 except as otherwise provided in any of such sections.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Sec. 166. Section 71-170, Reissue Revised Statutes of

Nebraska, is amended to read:

71-170. The ~~Department of Health and Human Services Regulation and Licensure~~ department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published: (1) The law regulating the practice of the profession; (2) the rules of the department relative to licenses, certificates, and registrations; and (3) the rules relating to examinations adopted by the department on the recommendation of the board. ~~of examiners.~~

Sec. 167. Section 71-171.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-171.01. The department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by the licensee, certificate holder, or registrant. The Attorney General shall then determine which, if any, statutes, rules, or regulations the licensee, certificate holder, or registrant has violated and the appropriate legal action to take. The Attorney General may: (1) Elect to file a petition under section 71-150 or not to file a petition; (2) negotiate a voluntary surrender or voluntary limitation pursuant to section 71-161.11; or (3) in cases involving a technical or insubstantial violation, refer the matter to the appropriate board ~~of examiners~~ for the opportunity to resolve the matter by issuance of a letter of concern or to recommend to the Attorney General that he or she enter into an assurance of compliance with the licensee, certificate holder, or registrant in

lieu of filing a petition. Neither a letter of concern nor an assurance of compliance shall constitute discipline against a licensee, certificate holder, or registrant.

Sec. 168. Section 71-171.02, Revised Statutes Supplement, 1998, is amended to read:

71-171.02. Upon referral of a matter under section 71-171.01 by the Attorney General, the board ~~of examiners~~ may:

(1) Send to the licensee, certificate holder, or registrant a letter of concern, approved by the Attorney General, which includes a statement of the statute, rule, or regulation in question and a statement advising the licensee, certificate holder, or registrant of the conduct that would violate such statute, rule, or regulation. Such letter shall be signed by the board and shall become a part of the public record of the licensee, certificate holder, or registrant;

(2) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the licensee, certificate holder, or registrant to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the licensee, certificate holder, or registrant that he or she will not engage in such conduct, and acknowledgment by the licensee, certificate holder, or registrant that violation of the assurance constitutes unprofessional conduct as provided by subdivision (17) of section 71-148. Such assurance shall be signed by the licensee, certificate holder, or registrant and shall become

a part of the public record of the licensee, certificate holder, or registrant. The licensee, certificate holder, or registrant shall not be required to admit to any violation of the law and the assurance shall not be construed as such an admission; or

(3) Recommend that the Attorney General file a petition under section 71-150.

Sec. 169. Section 71-1,142, Revised Statutes Supplement, 1998, is amended to read:

71-1,142. Sections 71-1,142 to 71-1,147 and sections 170 to 254, 256 to 258, 263, and 271 of this act shall be known and may be cited as the Pharmacy Practice Act. ~~For purposes of the Uniform Licensing Law, unless the context otherwise requires:~~

~~(1) Practice of pharmacy shall mean (a) the interpretation and evaluation of prescription orders, (b) the compounding, dispensing, and labeling of drugs and devices, except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices, (c) the participation in drug selection, drug utilization review, drug source selection, and drug administration, (d) the proper and safe storage of drugs and devices and the maintenance of proper records therefor, (e) patient counseling, (f) the provision of pharmaceutical care, and (g) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy. The active practice of pharmacy shall mean the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;~~

~~(2) Administration shall mean the direct application of a~~

~~drug or device by injection, inhalation, ingestion, or other means to the body of a patient;~~

~~(3) Board of pharmacy or board shall mean the Board of Examiners in Pharmacy;~~

~~(4) Caregiver shall mean any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;~~

~~(5) Compounding shall mean the preparation, mixing, or assembling of a drug or device (a) as the result of a practitioner's prescription order or initiative occurring in the course of professional practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding shall include the preparation of drugs or devices in anticipation of prescription orders based upon routine, regularly observed prescribing patterns;~~

~~(6) Deliver or delivery shall mean the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration;~~

~~(7) Department shall mean the Department of Health and Human Services Regulation and Licensure;~~

~~(8) Device shall mean an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so;~~

~~(9) Dialysis drug or device distributor shall mean a manufacturer or wholesaler who provides dialysis drugs, solutions,~~

~~supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, upon the order of a medical practitioner;~~

~~(10) Dialysis drug or device distributor worker shall mean a person working for a dialysis drug or device distributor operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering a patient order;~~

~~(11) Dispense or dispensing shall mean the preparation and delivery of a drug or device pursuant to a lawful order of a medical practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug or device;~~

~~(12) Distribute shall mean the delivery of a drug or device other than by administering or dispensing;~~

~~(13) Drug dispensing permit shall mean a permit issued by the department upon the recommendation of the board to a public health clinic or a dialysis drug or device distributor which allows for the dispensing of drugs and devices in the formulary approved pursuant to section 71-1,147.48;~~

~~(14) Person shall mean an individual, corporation, partnership, limited liability company, association, or other legal entity;~~

~~(15) Labeling shall mean the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or~~

~~device. Any such label shall include all information required by federal and state law or regulation;~~

~~(16) Pharmaceutical care shall mean the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes shall include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care shall include the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;~~

~~(17) Pharmacist shall mean any person who (a) is licensed by the State of Nebraska to practice pharmacy or (b) is primarily responsible for providing pharmaceutical care as defined in subdivision (16) of this section;~~

~~(18) Pharmacy shall mean (a) any establishment, place, or location advertised as a pharmacy, drug store, hospital pharmacy, dispensary, apothecary, or any combination of such titles or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143 and (b) any establishment, place, or location used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient, but shall not include an emergency box located within an institution pursuant to the provisions of the Emergency Box Drug Act;~~

~~(19) Drugs, medicines, and medicinal substances shall~~

~~mean (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs as defined in subdivision (24) of this section;~~

~~(20) Medical practitioner shall mean any licensed physician, surgeon, podiatrist, dentist, or other person licensed to write prescriptions intended for treatment or prevention of disease or to affect body function in humans or animals;~~

~~(21) Patient counseling shall mean the verbal communication by a pharmacist, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescribed drugs and devices and shall also include the duties set out in subsection (2) of section 71-1,147.35;~~

~~(22) Pharmacist in charge shall mean a pharmacist licensed by the State of Nebraska to practice pharmacy who has been designated on a pharmacy permit or designated by a public or private hospital licensed by the department as being responsible for the practice of pharmacy in the pharmacy for which such permit is issued or such hospital's inpatient pharmacy and who shall work~~

~~within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;~~

~~(23) Pharmacy intern shall mean (a) a student currently enrolled in an accredited college or school of pharmacy or (b) a graduate of an accredited college or school of pharmacy serving his or her internship, such internship to expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Such pharmacy intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (i) the person to whom the pharmacy permit is issued or a person in the actual employ of the permittee or (ii) the pharmacist in charge designated by a public or private institution licensed as a hospital by the department which is not required to obtain a permit pursuant to section 71-1,147.01 or a person in the actual employ of such institution;~~

~~(24) Prescription drug or legend drug shall mean (a) a drug which under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) Caution: Federal law prohibits dispensing without prescription; or (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian or (b) a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by medical practitioners only;~~

~~(25) Prescription order or prescription shall mean a~~

~~lawful written or verbal order of a medical practitioner for a drug or device but shall not include an order for a drug or device which is dispensed for administration to a patient during the patient's stay in a hospital;~~

~~(26) Nonprescription drugs shall mean nonnarcotic medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;~~

~~(27) Public health clinic worker shall mean a person in a public health clinic operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives;~~

~~(28) Public health clinic shall mean the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-2017.01;~~

~~(29) Supervision shall mean the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by supportive pharmacy personnel of authorized activities or functions subject to verification by such pharmacist, except that when supportive pharmacy personnel perform authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to patients or residents of a health care facility licensed pursuant to sections 71-2017 to 71-2029, the~~

~~activities or functions of such supportive pharmacy personnel shall only be subject to verification by a pharmacist on duty in the facility;~~

~~(30)~~ Supportive pharmacy personnel shall mean ~~individuals at least eighteen years of age who are high school graduates or officially recognized by the State Department of Education as possessing the equivalent degree of education, who have never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy and who have received onsite training pursuant to subsection (4) of section 71-1,147.33, may perform those functions which do not require the exercise of professional judgment in assisting a pharmacist in connection with the preparation, compounding, dispensing, and distribution of drugs or devices under the supervision of a licensed pharmacist on duty in the facility, when such functions are subject to verification. The ratio of supportive pharmacy personnel allowed to assist one pharmacist in the preparation, compounding, dispensing, and distribution of drugs or devices shall not exceed one-to-one, except that a two-to-one ratio may apply to supportive pharmacy personnel assisting a pharmacist in circumstances when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to patients of a hospital licensed pursuant to sections 71-2017 to 71-2029. Under no circumstances shall the ratio exceed two supportive pharmacy personnel to one supervising pharmacist;~~

~~(31)~~ Verification shall mean ~~the confirmation by the supervising pharmacist of the accuracy and completeness of the~~

~~acts, tasks, or functions undertaken by supportive pharmacy personnel to assist the pharmacist in the practice of pharmacy. Verification by the supervising pharmacist shall be documented prior to the time when the drug or device is dispensed; and~~

~~(32)~~ ~~Written control procedures and guidelines shall mean the document prepared by an employing pharmacy and approved by the board which specifies the manner in which the qualifications of supportive pharmacy personnel employed by the pharmacy are determined, the manner in which the training of such personnel is conducted and their basic level of competency is confirmed, the manner in which supervision is provided, the manner in which the functions of supportive pharmacy personnel are verified, and a protocol governing the use of supportive pharmacy personnel and the functions which they may perform.~~

Sec. 170. When used in the Pharmacy Practice Act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires, the definitions found in sections 171 to 254 of this act shall apply.

Sec. 171. Practice of pharmacy shall mean (1) the interpretation, evaluation, and implementation of medical orders, (2) the dispensing of drugs or devices pursuant to a medical order, (3) drug and device selection, (4) administration of drugs or devices, (5) drug utilization review, (6) provision of patient counseling, (7) telepharmacy, (8) the provision of those acts or services necessary to provide pharmaceutical care, and (9) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records therefor.

Sec. 172. Accredited school or college of pharmacy or accredited department of pharmacy of a university shall mean an institution approved by the board upon the recommendation of the accrediting committee of the American Council on Pharmaceutical Education.

Sec. 173. Active practice of pharmacy shall mean the performance of functions set out in the practice of pharmacy by a pharmacist as part of his or her principal or ordinary occupation.

Sec. 174. Administer shall mean the direct application of a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.

Sec. 175. Administration shall mean the acts of (1) administering drugs or devices to another person, (2) keeping record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the drug or device.

Sec. 176. Adulteration shall mean (1) a drug that is sold under or by the name recognized in the United States Pharmacopoeia or National Formulary but that differs from the standard of strength, quality, or purity as determined by the test in the official version of the United States Pharmacopoeia or National Formulary at the time of investigation, except that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated if the standard of strength or purity is plainly stated upon the bottle, box, or other container, even though the standard may differ from that determined by the test in the United States Pharmacopoeia or National

Formulary, or (2) a drug which has strength or purity levels that fall below the professed standard of quality under which the drug is sold.

Sec. 177. Authorized tasks and functions shall mean those tasks and functions, listed in the written control procedures and guidelines approved by the board, which a pharmacy technician has been deemed competent to perform onsite in the pharmacy by the pharmacist-in-charge of that pharmacy.

Sec. 178. Automated pharmacy systems shall include, but are not limited to, mechanical systems which assist in performing operations or activities, other than compounding, administering, or delivery, relative to the storage, packaging, dispensing, or distribution of drugs or devices and which collect, control, and maintain all transaction information.

Sec. 179. Beyond-Use-Date shall mean a date determined by the pharmacist and placed on a prescription label at the time of dispensing that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

Sec. 180. Blood shall mean whole blood collected from a single donor and processed either for transfusion or further manufacturing.

Sec. 181. Blood component shall mean that part of blood separated by physical or mechanical means.

Sec. 182. Board shall mean the Board of Pharmacy.

Sec. 183. Brand name shall mean the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug and placed upon its label at the time of packaging.

Sec. 184. Calculated expiration date shall mean an expiration date on a repackaged product which is not greater than twenty-five percent of the time between the date of repackaging and the expiration date of the commercial bulk container nor greater than six months from the date of repackaging.

Sec. 185. Caregiver shall mean any person acting as an agent on behalf of a patient or any person aiding and assisting a patient.

Sec. 186. Certified pharmacy technician shall mean an individual registered by the department as a pharmacy technician, who possesses a valid certificate from a pharmacy technician training program approved by the board upon the recommendation of the Nebraska Council for Continuing Pharmaceutical Education. Only such an individual may use the designation certified pharmacy technician or C.Ph.T.

Sec. 187. Chart order shall mean a medical order of a practitioner for a patient who is a bed patient in the hospital where the chart is stored or a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412.

Sec. 188. Collaborative practice shall mean that practice of pharmacy by which a pharmacist has jointly agreed, on a voluntary basis, to provide pharmaceutical care to a defined population of patients under a collaborative practice protocol with one or more practitioners.

Sec. 189. Collaborative practice of pharmacy shall mean that practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more practitioners, distributors of medical gasses, or

facilities under a protocol which provides that the practitioner, distributor of medical gasses, or facility may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions or limitations. A collaborative practice of pharmacy agreement between a pharmacist and a facility shall be deemed to authorize all licensed staff members of such facility to perform certain dispensing functions.

Sec. 190. Common control shall mean that the power to direct or cause the direction of the management and policies of a person or an organization by ownership of stock or voting rights, by contract, or otherwise, is held by the same person or persons.

Sec. 191. Compounding shall mean the measuring, mixing, or assembling of a drug or device based upon the relationship between the practitioner, patient, and pharmacist and shall only occur in the pharmacy where the drug or device is dispensed to the patient or caregiver.

Sec. 192. Confidential information shall mean information about the patient, the patient's health, or the patient's therapy.

Sec. 193. Continuing education shall mean study, by a pharmacist, in any subject area applicable to the practice of pharmacy.

Sec. 194. Continuing education program shall mean an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction as approved by the Nebraska Council for Continuing Pharmaceutical Education or the American Council on Pharmaceutical Education.

Sec. 195. Device shall mean an instrument, apparatus,

implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so.

Sec. 196. Dialysis drug or device distributor shall mean a manufacturer, wholesaler, or distributor with a drug dispensing permit who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription.

Sec. 197. Dialysis drug or device distributor worker shall mean a person working for a dialysis drug or device distributor operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription.

Sec. 198. Dispense or dispensing shall mean the interpretation, evaluation, and implementation of a medical order, including the preparation and delivery of a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing shall include (1) dispensing incident to practice, (2) sampling, (3) dispersing pursuant to a collaborative practice of pharmacy agreement, (4) dispensing pursuant to a medical order, (5) dosing, and (6) any transfer of a prescription drug or device to a patient or caregiver other than by administering.

Sec. 199. Dispensing incident to practice shall mean the act of dispensing by a practitioner, at no charge, to his or her

patients on a nonroutine basis.

Sec. 200. Distribute shall mean the delivery of a drug or device other than by administering or dispensing to any person other than the ultimate user or caregiver.

Sec. 201. Distributor shall mean a person who distributes, including a reverse distributor.

Sec. 202. Dosing shall mean dispensing as defined in section 198 of this act.

Sec. 203. Drug shall mean (1) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or other animals, (3) articles, except food, intended to affect the structure or any function of the body of humans or other animals, and (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section.

Sec. 204. Drug dispensing permit shall mean a permit issued by the department upon the recommendation of the board to any person or facility dispensing under a collaborative practice of pharmacy agreement.

Sec. 205. Drug product select shall mean to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand name drug product ordered or prescribed.

Sec. 206. Electromagnetic transmission shall mean the transmission of information in electromagnetic form or the transmission of the exact visual image of a document by way of

electromagnetic transmission equipment.

Sec. 207. Emergency shall mean a condition of urgent need for action or assistance.

Sec. 208. Emergency box shall mean a sealable container used to store emergency drugs in a long-term care facility.

Sec. 209. Emergency medical service shall have the same meaning as found in section 71-5172.

Sec. 210. Equivalent drug product shall mean a pharmaceutically equivalent drug product that has been deemed by the federal Drug Enforcement Administration to be bioequivalent.

Sec. 211. Facility shall have the same meaning as found in sections 71-2017 to 71-2029.

Sec. 212. Food shall mean a substance eaten primarily for nutritive value or for taste and aroma.

Sec. 213. Formulary shall mean a listing of drugs and devices approved for dispensing by a committee of pharmacists and practitioners.

Sec. 214. Generic name shall mean the official title of a drug or drug combination as determined by the United States Adopted Names and accepted by the Federal Food and Drug Administration of those drug products having exactly the same active chemical ingredients in exactly the same strength and quantity.

Sec. 215. Hospital shall mean a facility licensed by the department pursuant to sections 71-2017 to 71-2029.

Sec. 216. Labeling shall mean the process of preparing and affixing a label to any drug or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a

nonprescription drug or device, commercially packaged legend drug or device, or commercially packaged controlled substance. Any such label shall include all information required by federal and state law or regulation.

Sec. 217. Long-term care facility shall mean a facility licensed by the department pursuant to sections 71-2017 to 71-2029.

Sec. 218. Manufacturer shall mean a person engaged in the manufacturing of drugs or devices.

Sec. 219. Medical order shall mean a lawful order of a practitioner for a drug, device, or pharmaceutical care Medical order includes (1) a prescription, (2) a chart order, or (3) a collaborative practice agreement.

Sec. 220. Misbranding shall mean a false or misleading package or label of a drug product concerning a statement, design, or device regarding drugs or the ingredients of substances contained therein, or any drug product which is falsely branded as to the state, territory, place, or authority in which it is manufactured or produced. A drug product shall be deemed misbranded if: (1) It is an imitation of or offered for sale under the name of another article, (2) it is labeled or branded so as to deceive or mislead the purchaser or purports to be a foreign product when it is not, (3) the contents of the package as originally packaged have been removed, in whole or in part, and other contents have been placed in such package, (4) the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, phenacetine, antipyrine, belladonna or any derivative

or preparation of any such substance contained therein, or (5) its package or label bears or contains any false or fraudulent statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein.

Sec. 221. Multiple dose vial shall mean any bottle in which more than one dose of a liquid drug or drug in suspension is stored or contained.

Sec. 222. Narcotic drug shall mean a drug as defined in section 47 of this act.

Sec. 223. Nonprescription drug shall mean a nonnarcotic drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the statutes, rules, and regulations of this state and the federal government.

Sec. 224. Nonresident pharmacy shall mean a pharmacy located outside of the State of Nebraska.

Sec. 225. Packager shall mean a person who repackages from a commercial bulk container for purposes of distribution.

Sec. 226. Patient counseling shall mean the verbal communication by a pharmacist, pharmacist intern, or practitioner in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescribed drugs and devices and shall also include the duties set out in section 71-1,147.35.

Sec. 227. Person shall mean an individual, corporation, partnership, limited liability company, association, or other legal

entity, including the government.

Sec. 228. Pharmaceutical care shall mean the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes shall include (1) the cure of disease, (2) the elimination or reduction of a patient's symptomatology, (3) the arrest or slowing of a disease process, or (4) the prevention of a disease or symptomatology. Pharmaceutical care shall include the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient.

Sec. 229. Pharmaceutically equivalent drug product shall mean a drug product that contains the same active ingredient or ingredients in the same strength or concentration and dosage form, meets the same compendial or applicable standards, and is intended for the same route of administration.

Sec. 230. Pharmacist shall mean any person who is currently licensed by the state to engage in the practice of pharmacy.

Sec. 231. Pharmacist-in-charge shall mean a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all statutes, rules, and regulations pertinent to the practice of pharmacy and the distribution of drugs and devices and who is personally in full and actual charge of such pharmacy and personnel.

Sec. 232. Pharmacist intern shall mean an individual who is: (1) Currently registered by the state to engage in the

practice of pharmacy while under the personal supervision of a pharmacist and satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; (2) a graduate of an accredited school or college of pharmacy or accredited department of pharmacy of a university or a graduate who has established educational equivalence by obtaining a Foreign Pharmacy Graduate Examination Committee Certificate and who is currently registered by the department for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or (3) a qualified applicant awaiting examination for licensure or a qualified applicant awaiting the results of an examination for licensure.

Sec. 233. Pharmacy shall mean any place licensed by the department within this state where drugs and devices are dispensed and any nonresident pharmacy.

Sec. 234. Pharmacy technician shall mean an individual registered by the department as a pharmacy technician who may perform those authorized tasks and functions which do not require the exercise of professional judgment in assisting a pharmacist in connection with the practice of pharmacy under the supervision of a pharmacist.

Sec. 235. Practitioner shall mean an individual currently licensed as an advanced registered nurse practitioner, certified nurse midwife, dentist, optometrist, osteopathic physician and surgeon, physician assistant, physician, podiatrist, or veterinarian.

Sec. 236. Prescribe shall mean the act of a practitioner in issuing a medical order.

Sec. 237. Prescription shall mean a lawful medical order

from a practitioner for a drug or device or pharmaceutical care for a specific patient or a specified situation, including orders derived from a collaborative practice of pharmacy agreement, but shall not include a chart order.

Sec. 238. Prescription drug or device or legend drug or device shall mean (1) a drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered: (a) Caution: Federal law prohibits dispensing without prescription; (b) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (c) "Rx Only"; or (2) a drug or device which is required by any applicable federal or state statute, rule, or regulation to be dispensed pursuant only to a medical order or which is restricted to use by practitioners only.

Sec. 239. Prescription drug or device sample shall mean a unit of a prescription drug or device intended to promote the sale of the drug or device and not intended or allowed to be sold, but shall not include units of nonprescription drugs or devices.

Sec. 240. Public health clinic shall mean the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-2017.01.

Sec. 241. Public health clinic worker shall mean an individual in a public health clinic operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a prescription.

Sec. 242. Reverse distributor shall mean a person whose primary function is to act as an agent for pharmacies, wholesalers, manufactures, and other entities by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable drugs or devices.

Sec. 243. Sampling shall mean the act of dispensing by a practitioner, at no charge, to his or her patients, drugs or devices which have been prepackaged and labeled by the manufacturer, distributor, or packager as samples, and which are not intended or allowed to be sold.

Sec. 244. Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies section 86-1701.

Sec. 245. Specified situation shall mean for emergency use or use in immunizations.

Sec. 246. Supervision shall mean the responsible personal guidance and direction by a pharmacist.

Sec. 247. Telepharmacy shall mean engaging in the distance practice of pharmacy, whereby the pharmacist engages in one or more aspects of the practice of pharmacy at a site other than the site where the patient is located.

Sec. 248. Temporary educational permit shall mean a permit to engage in the practice of pharmacy in a supervised educational program approved by the board.

Sec. 249. Ultimate user shall mean an individual who lawfully possesses a drug or device for his or her own use, for the use of a member of his or her household, or for administration to

an animal owned by him or her or to a member of his or her household.

Sec. 250. Unprofessional conduct shall mean any departure from or failure to conform to the standards of acceptable and prevailing practice of pharmacy or a departure from or failure to conform to the ethics of the practice of pharmacy, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest.

Sec. 251. Verification shall mean the confirmation by the supervising pharmacist of the accuracy and completeness of the authorized tasks or functions undertaken by the pharmacy technician to assist the pharmacist in the practice of pharmacy.

Sec. 252. Wholesale drug distribution shall mean the distribution of prescription drugs or devices to a person other than a consumer or patient.

Sec. 253. Wholesale drug distributor shall mean a person licensed by the department to engage in wholesale drug distribution.

Sec. 254. Written control procedures and guidelines shall mean the document prepared and signed by the pharmacist-in-charge, and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the authorized tasks and functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians

and the authorized tasks and functions they may perform.

Sec. 255. Section 71-1,143, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,143. Sections 71-1,142 and 71-1,147 shall not be construed to include:

(1) ~~Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;~~

~~(2)~~ ~~Medical practitioners who dispense~~ Practitioners who engage in dispensing drugs and ~~medicines~~ devices as an incident to the practice of their profession~~, unless the practitioner regularly engages in dispensing such drugs and medicines to his or her patients for which such patients are charged. Except as provided in section 71-1,147.53, a medical practitioner who regularly engages in dispensing drugs and medicines to his or her patients and who charges for such drugs shall obtain a pharmacy permit and comply with all record-keeping, dispensing, labeling, and other requirements of the practice of pharmacy as set forth in this section and sections 71-1,142, 71-1,145 to 71-1,147.01, 71-1,147.03, 71-1,147.07 to 71-1,147.10, 71-1,147.15, 71-1,147.16, and 71-1,147.35 or by federal and state laws as they pertain to the regulation of the practice of pharmacy. Such regular and routine dispensing shall not be considered to be incident to practice, nor may such a practitioner delegate such dispensing to any other person~~ or who engage in sampling;

(2) ~~(3)~~ Persons who sell, offer, or expose for sale nonprescription drugs~~, or proprietary medicines,~~ the sale of which is not in itself a violation of the law relating to intoxicating

liquors;

(3) ~~(4)~~ Medical representatives, detail persons, salespersons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to ~~health care practitioners~~ members of the healing arts;

(4) ~~(5)~~ Licensed veterinarians when practicing within the scope of their profession;

(5) Licensed members of the healing arts or medication aides who set up dispensed drugs into memory packages for improved patient adherence with pharmacotherapy, except that anyone setting up such memory packages shall first contact a pharmacist prior to such setup to determine the dosing times and compatibility of such drugs; and ~~;~~

(7) ~~(6)~~ Persons authorized by the collaborative practice of pharmacy to dispense drugs or devices. ~~sections 71-1,147.39 to 71-1,147.61 to dispense authorized refills of oral contraceptives in a public health clinic operating with a drug dispensing permit; and~~

~~(7) Advanced registered nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient.~~

Sec. 256. (1) All medical orders shall be valid for the duration of the medical order, or for a period of six months if an order for a controlled substance pursuant to section 28-405, or for a period of twelve months if an order for a drug or device not listed in Schedules II, III, IV, or V of section 28-405, whichever date comes first.

(2) All medical orders for drugs or devices may only be lawfully dispensed by a duly licensed pharmacist or by a person with a collaborative practice of pharmacy agreement.

(3) All medical orders may be transmitted by the practitioner to a pharmacist or pharmacist intern in writing, verbally or by electromagnetic transmission unless restricted by section 28-414.

Sec. 257. (1) The board, pursuant to section 71-112.03, shall be responsible for the control and regulation of the practice of pharmacy in this state, including, but not limited to, the following:

(a) The establishment of professional standards and rules and regulations of conduct of pharmacists engaged in the practice of pharmacy;

(b) The determination and issuance of standards for recognition and approval of degree programs of accredited schools or colleges of pharmacy or accredited departments of pharmacy of a university whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training, including internship;

(c) Establishing standards for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices and for the monitoring of drug therapy;

(d) Establishing standards for the purity and quality of such drugs, devices, and other materials within the practice of pharmacy; and

(e) Establishing standards for maintaining the integrity

and confidentiality of medical order information and other patient health care information, including standards for the electromagnetic transmission of such information.

(2) The board shall have such other duties, powers, and authority as may be necessary to the enforcement of the Pharmacy Practice Act and its rules and regulations which include, but are not limited to, the following:

(a) The board may join such professional organizations and associations, including the National Association of Boards of Pharmacy, organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public or whose activities assist and facilitate the work of the board;

(b) The board may receive and expend funds, in addition to its annual appropriation, from parties other than the state if:

(i) Such funds are awarded for the pursuit of a specific objective which the board is authorized to accomplish by the Uniform Licensing Law or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(ii) Such funds are expended for the pursuit of the objective for which they are awarded;

(iii) Activities connected with or occasioned by the expenditure of such funds do not interfere with the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by the Uniform Licensing Law;

(iv) Such funds are kept in a separate special account; and

(v) Periodic reports are made concerning the board's receipt and expenditure of such funds;

(c) The board may establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care;

(d) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers, and authority in accordance with the Administrative Procedure Act; and

(e) The board may grant a temporary variance from any rule or regulation for the purposes of a demonstration project except rules or regulations concerning examinations, experience hours, and requirements for licensure as a pharmacist or registration as a pharmacist intern or a pharmacy technician. No variance shall expand the scope of practice for pharmacy beyond the acts authorized in the Pharmacy Practice Act. The request for temporary variance shall be submitted to the board in writing and shall contain the following information:

(i) The name, address, and license or permit number of the applicant;

(ii) The name of the responsible pharmacist and the specific location at which activities will be conducted under the temporary variance;

(iii) The citation to the specific rule or regulation from which the applicant seeks a temporary variance;

(iv) A detailed explanation of the purpose of the temporary variance;

(v) An assessment of the impact on the public if the temporary variance is granted;

(vi) A statement of the conditions which would cause the applicant to apply for renewal of the temporary variance; and

(vii) The beginning, midpoint, and ending dates of the proposed demonstration project.

The board may grant a temporary variance for a period of no more than six months. Any person who receives a temporary variance shall submit to the board a written report of the effects of the demonstration project at the midpoint and at the conclusion of the temporary variance. A temporary variance may be renewed by the board for an additional six-month period.

Sec. 258. The board may appoint any advisory committees from within its membership or from other pharmacists or experts within this state to advise the board on issues under its jurisdiction. Such committees may include, but are not limited to, committees on: Continuing education, long-term care facility emergency drugs, collaborative practice, collaborative practice of pharmacy, and the formulary to be allowed in collaborative practice of pharmacy agreements.

Sec. 259. Section 71-1,144.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.01. ~~(1) Commencing in 1984, standards~~ Standards for relicensure for each pharmacist within the ~~State of Nebraska~~ state shall require that such pharmacist biennially complete continuing education hours or demonstrate continued competence ~~thirty hours of continuing education,~~ as prescribed ~~in sections 71-1,144.01 to 71-1,144.05~~ and by the rules and regulations of the board.

~~(2) As used in sections 71-1,144.01 to 71-1,144.05,~~

~~unless the context otherwise requires:~~

~~(a) Continuing education shall mean study in one or more of the general areas of socioeconomic, administrative, managerial, and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state; and related topics appropriate to the pharmacist in his or her role which are offered by an approved provider but not part of a formal degree program. The activity shall be a planned learning experience designed to promote the continual development of knowledge, skills, and attitudes on the part of the practitioner;~~

~~(b) Approved provider shall mean an institution or organization meeting the same quality standards as those established in the Criteria for Quality of the American Council on Pharmaceutical Education;~~

~~(c) Continuing education unit shall mean ten contact hours of participation in an organized continuing education experience, under responsible sponsorship, capable direction, and qualified instruction as defined by the American Council on Pharmaceutical Education;~~

~~(d) Board shall mean the Board of Examiners in Pharmacy;~~

~~(e) Department shall mean the Department of Health and Human Services Regulation and Licensure; and~~

~~(f) Committee shall mean the Committee on Continuing Pharmacy Education.~~

Sec. 260. Section 71-1,144.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.03. Every pharmacist licensed by the

department, except those exempt under subsection (2) of section 71-1,144.04, shall accumulate continuing education credit hours as prescribed by rules and regulations of the board ~~equaling at least three continuing education units~~ during each twenty-four-month licensure pursuant to section 71-1,144.01. Credit earned in excess of the requirement may not be carried into subsequent periods.

Only a continuing education program as defined in section 194 of this act ~~credits awarded by approved providers~~ shall be accepted as fulfilling the continuing education requirement.

~~Acceptable modes of instruction shall include conferences, lectures, seminars, discussion groups, case studies, correspondence and home study courses which may utilize audio or videotape presentations, computer-assisted instruction, conferences by telephone or television, whenever the criteria for quality as outlined by the American Council on Pharmaceutical Education are achieved by the approved provider.~~

Sec. 261. Section 71-1,144.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.04. (1) Each pharmacist shall provide a listing of continuing education ~~activities~~ programs participated in or attended, the amount of credit received for each ~~activity~~ program, ~~and~~ the date, the location, and the name of the approved provider which sponsored the program ~~activity on a separate form or portion of the license renewal application~~ as may be designed by the department. Each pharmacist shall be responsible for maintaining in his or her personal files such certificates or records of credit from continuing education ~~activities~~ programs received from approved providers.

The board shall biennially select, in a random manner, a representative sample of the license renewal applications for audit of continuing education credits. The names, addresses, and a copy of the ~~section of the application form which lists~~ listing of continuing education credits shall be forwarded to ~~the~~ an advisory committee appointed pursuant to section 258 of this act which shall cause the pharmacist to submit certificates or other records of attendance which were received from the approved provider for review by the committee. Such certificates shall be signed by a representative of the approved provider or the Nebraska Council on Continuing Pharmaceutical Education and shall indicate the title of the program, date of the program, location of the program, name of the pharmacist earning credit, and the quantity of credit hours earned.

(2) The department~~, on~~ shall, upon the recommendation of the ~~Board of Examiners in Pharmacy, may~~ board, waive continuing education requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances ~~shall~~ may include situations in which:

(a) The licensee holds a Nebraska license but does not reside or practice pharmacy in Nebraska, including the practice of telepharmacy;

(b) The licensee has served in the regular armed forces of the United States during part of the twenty-four months immediately preceding the license renewal date;

(c) The licensee has submitted proof that he or she was

suffering from a serious or disabling illness or physical ~~disability~~ condition which prevented completion of the required number of continuing education hours during the twenty-four months preceding the license renewal date;

(d) The licensee has been initially licensed by the board within the twenty-four months immediately preceding the license renewal date; ~~and~~ or

(e) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college of pharmacy ~~which contributes to meeting the requirements of an advanced degree in pharmacy~~ or accredited department of pharmacy of a university.

~~The department, with the consent of the Board of Examiners in Pharmacy, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.~~

Sec. 262. Section 71-1,145, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,145. (1) Every applicant for ~~examination and registration~~ licensure as a pharmacist shall (a) be not less than ~~twenty-one years of age, of good moral character and temperate habits,~~ the age of majority in this state, (b) be a graduate of an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, ~~recognized by the Board of Examiners in Pharmacy,~~ except that an applicant who is a graduate of a school, college, or university department of pharmacy located outside of the United States and which is not accredited, ~~shall~~ may be deemed to have satisfied the requirement of being a graduate of

an accredited school, college, or department of pharmacy upon providing evidence satisfactory to the ~~Board of Examiners in Pharmacy~~ board, of graduation from such foreign school, college, or department of pharmacy, ~~and~~ upon successfully passing an equivalency examination approved by the ~~Board of Examiners in Pharmacy~~ board, and upon supplying to the board proof of passing such examination, (c) have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited school or college of pharmacy or in an accredited department of pharmacy of a university, except foreign pharmacy graduates as described in subdivision (b) of this subsection, and (d) pass an examination satisfactory to the board.

(2) Every applicant for licensure as a pharmacist shall file proof of sufficient internship experience in a ~~community retail or hospital~~ pharmacy, under the supervision of a ~~registered or licensed~~ pharmacist, as may be required by the ~~Board of Examiners in Pharmacy~~ board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy. Such experience shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure. The fee for pharmacy internship shall be determined by the department and set forth in rules and regulations and shall

accompany the application. The fees shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund for expenditure in the manner prescribed by section 71-1,147.02. ~~; shall have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited school or college of pharmacy, or in an accredited department of pharmacy of a university; and shall pass an examination satisfactory to the Board of Examiners in Pharmacy.~~

(3) Proof of the qualifications for ~~registration prescribed~~ licensure required in this section shall be made to the satisfaction of the ~~Board of Examiners in Pharmacy~~ board, substantiated by proper affidavits, except that in all cases the actual time of attendance at an accredited school or college of pharmacy~~,~~ or an accredited department of pharmacy of a university~~,~~ is certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or department of pharmacy. ~~Service and experience in a retail or hospital pharmacy under the supervision of a registered pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy, and shall include the keeping of records and the making of reports required under state and federal statutes. The Department of Health and Human Services Regulation and Licensure, upon the recommendation of the Board of Examiners in Pharmacy, shall promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure. The fee for pharmacy internship shall be forty dollars~~

~~and shall accompany the application and shall be transmitted to the State Treasurer for deposit in the Nebraska Pharmaceutical Fund for expenditure in the manner prescribed by section 71-1,147.02.~~

Sec. 263. A pharmacist unless specifically limited by the board or the department has the authority to (1) engage in the practice of pharmacy, (2) use the title R.P. or licensed pharmacist, (3) enter into collaborative practice agreements, (4) enter into collaborative practice of pharmacy agreements, and (5) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration.

Sec. 264. Section 71-1,147, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147. (1) Except as provided in sections 71-1,147.33 and 71-1,147.53, no person other than a ~~licensed~~ pharmacist, a pharmacist ~~or a pharmacy~~ intern, a practitioner with a valid drug dispensing permit, or a hospital operating pursuant to a collaborative practice of pharmacy agreement shall, as described in sections ~~71-1,142,~~ 71-1,143~~,~~ and 71-1,147 to 71-1,147.14, provide pharmaceutical care, or compound and dispense drugs ~~or~~ and devices~~, or fill the prescription of a medical practitioner~~ pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a ~~licensed~~ pharmacist or a pharmacist ~~or pharmacy~~ intern may dispense drugs or devices pursuant to a ~~prescription of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state~~ medical order and a practitioner with a valid drug dispensing permit or a hospital pursuant to a collaborative practice of pharmacy agreement may dispense drugs or devices,

subject to the provisions of the collaborative practice of pharmacy agreement, pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(2) ~~Except as provided in section 28-414, no prescription may be filled or refilled more than twelve months after the date of issuance of the prescription.~~

~~(3)~~ Except as provided in sections 71-1,147.33 and 71-1,147.53, it shall be unlawful for any person to permit or direct a person who is not a ~~pharmacy intern or licensed pharmacist~~ pharmacist, a pharmacist intern, a practitioner with a valid drug dispensing permit, or a licensed staff member of a hospital operating pursuant to a collaborative practice of pharmacy agreement to provide pharmaceutical care, compound and dispense drugs or devices, or ~~fill the prescription of a medical practitioner~~ dispense pursuant to a medical order. This subsection shall not apply to persons operating under a valid collaborative practice of pharmacy agreement who may be directed to provide services specified in the agreement.

(3) ~~(4)~~ It shall be unlawful for any person to coerce or attempt to coerce a pharmacist ~~to supervise any supportive pharmacy personnel for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a licensed pharmacist shall be considered an act of unprofessional conduct for purposes of section 71-147~~ into entering into a collaborative practice agreement or a collaborative practice

of pharmacy agreement. A violation of this subsection shall be prima facie evidence in an action against the permit of any pharmacy or facility or the license of any hospital in which such violation occurred.

~~(5)~~ (4) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist or pharmacist intern to violate any of the statutes, rules, or regulations of this state. A violation of this subsection by a pharmacist or practitioner shall be considered an act of unprofessional conduct for purposes of section 71-147. A violation of this subsection shall be prima facie evidence in an action against the permit of any pharmacy or facility or license of any hospital in which such violation occurred.

(5) It shall be unlawful for any person knowing or suspecting that a pharmacist or pharmacist intern is incapable of engaging in the practice of pharmacy, or that a pharmacy technician is incapable of assisting in the practice of pharmacy, with reasonable skill and competence to ensure the safety of the public, to fail to report any relevant information to the board. Violation of this subsection by a pharmacist or practitioner shall be considered an act of unprofessional conduct for purposes of section 71-147. A violation of this subsection shall be prima facie evidence in an action against the permit of any pharmacy or facility or license of any hospital in which such violation occurred.

(6) It shall be unlawful for any person to (a) engage in, or aid and abet an individual to engage in, the practice of pharmacy without a license, (b) assist in the practice of pharmacy,

or aid and abet an individual to assist in the practice of pharmacy, without having registered with the department, or (c) falsely use the title pharmacist, pharmacist intern, pharmacy technician, or certified pharmacy technician. A violation of this subsection shall be prima facie evidence in an action against the permit of any pharmacy or facility or license of any hospital in which such violation occurred.

(7) Any pharmacist subjected to coercion or attempted coercion pursuant to subsection (3) or (4) of this section has a cause of action against the person or employer and may recover his or her damages and reasonable attorney's fees.

(8) It shall be unlawful for any person to divulge or reveal any confidential information or personally identifiable information to a person except as authorized in section 71-1,147.36. Violation of this subsection by a pharmacist or practitioner shall be considered an act of unprofessional conduct for purposes of section 71-147. A violation of this subsection shall be prima facie evidence in an action against the permit of any pharmacy or facility or license of any hospital in which such violation occurred.

(9) It shall be unlawful for any person to violate section 71-2415.

(10) This ~~For purposes of this section, nothing in this~~ section shall not be construed to prohibit any ~~registered~~ nurse employed by a hospital from administering single doses of drugs from original drug containers or properly labeled prepackaged drug containers to any patient of the hospital upon the order ~~or prescription~~ of a ~~medical~~ practitioner or to prohibit such

~~registered~~ nurse employed by a hospital from procuring the original drug container or properly labeled prepackaged drug container for the purpose of single-dose drug administration to any patient of the hospital, who is onsite in the hospital upon the order ~~or prescription~~ of a ~~medical~~ practitioner.

~~(6)~~ (11) Violation of this section ~~by an unlicensed person~~ shall be a Class ~~III~~ I misdemeanor.

Sec. 265. Section 71-1,147.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.01. (1) A ~~No~~ person shall not engage in, conduct, or ~~carry on~~ operate a pharmacy ~~or engage in the practice of pharmacy~~ in this state unless the department ~~Department of Health and Human Services Regulation and Licensure~~ has issued a permit, including a drug dispensing permit, to conduct such pharmacy upon the recommendation of the board. Each permit shall be issued to a specific person and for a specific location. Separate permits shall be issued for each of the premises of any business establishment having more than one location.

(2)(a) This ~~Nothing contained in this~~ section shall not be construed to require a public or private institution licensed as a hospital by the department which is engaged in the compounding and dispensing of drugs ~~or medicines and the filling of prescriptions of medical practitioners and advanced registered nurse practitioners~~ and devices pursuant to legal medical orders for persons registered as patients ~~or~~ and confined in the hospital to obtain a permit as provided in sections ~~71-1,142,~~ 71-1,143~~,~~ and 71-1,147 to 71-1,147.14, either in the name of the hospital, an employee thereof, or any other person. This exemption from the

requirement to obtain a permit to conduct a pharmacy ~~or to engage in the practice of pharmacy as provided in such sections~~ does not include any public or private institution licensed as a hospital by the department which is primarily engaged in the compounding and dispensing of drugs and ~~medicines and the filling of prescriptions of medical practitioners and advanced registered nurse practitioners~~ devices pursuant to legal medical orders for persons not registered as patients ~~or~~ and confined to the hospital. This exemption shall not allow such hospital exemption from any other laws of this state or of the United States pertaining to pharmacy and the dispensing of drugs and ~~medicines~~ devices.

(b) Each public or private hospital which is licensed by the department shall designate a full-time, part-time, or consultant pharmacist licensed in this state as being the ~~pharmacist in charge and~~ pharmacist-in-charge responsible for the practice of pharmacy in such hospital. The board or its designated representatives shall have the authority to examine and inspect the practice of pharmacy in any public or private hospital licensed by the department.

(3) Any ~~medical~~ practitioner who regularly engages in the dispensing of drugs or ~~medicinal substances~~ devices to his or her patients as described in subdivision ~~(2)~~ (1) of section 71-1,143 shall be required to obtain a permit, except that a ~~medical~~ practitioner who dispenses drugs or medicinal substances incident to his or her practice or engages in sampling shall not be required to obtain a permit.

(4) The department shall issue a drug dispensing permit to practitioners, facilities, dispensers of medical gasses, or

providers of emergency medical services to allow for the storing and dispensing of drugs and devices pursuant to a collaborative practice of pharmacy agreement which has been submitted to the board. The pharmacist or pharmacists signing the collaborative practice of pharmacy agreement shall be listed as the collaborating pharmacist or collaborating pharmacists-in-charge on such permits.

(5) No pharmacy permit, including a drug dispensing permit, shall be required in facilities licensed by the department if dispensed drugs or devices are delivered from the pharmacy for pickup by the patient or caregiver and no dispensing or storage of drugs or devices occurs.

Sec. 266. Section 71-1,147.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.02. Each application for or renewal of a pharmacy permit, including a drug dispensing permit, ~~to conduct a pharmacy~~ shall be ~~made on a form prescribed by the Board of Examiners in Pharmacy and furnished by the Department of Health and Human Services Regulation and Licensure. Such permit shall be displayed in a conspicuous place in the pharmacy for which it is issued and~~ sent to the department as defined in rules and regulations and shall be accompanied by the appropriate fee. Every such permit shall ~~expire on June 30~~ be expired on July 1 following the date of issuance. The department shall, on or before the tenth day of each month, remit to the State Treasurer all fees and money collected in connection, directly or indirectly, with the issuance of or renewal of a pharmacy permit, including a drug dispensing permit. ~~, to conduct a pharmacy.~~ Such fees and money shall be credited by the State Treasurer to the Nebraska Pharmaceutical

Fund, which fund is hereby created. The fund shall be used exclusively for the administration of the ~~laws~~ statutes, rules, and regulations pertaining to pharmacies, the practice of pharmacy, and the Wholesale Drug Distributor Licensing Act. Any money in the Nebraska Pharmaceutical Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 267. Section 71-1,147.03, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.03. (1) When a person applies for a pharmacy permit or drug dispensing permit, he or she shall include the name of the person who owns the pharmacy and the name of the pharmacist who will serve as the pharmacist-in-charge and submit the fee determined by the department in rules and regulations.

(2) If the person applying for a pharmacy permit or drug dispensing permit is a practitioner who dispenses drugs or devices to his or her own patients, such practitioner shall be named as the practitioner-in-charge and shall assume the responsibilities for all dispensing and counseling functions for his or her patients.

(3) If the person applying for a pharmacy permit or drug dispensing permit and submitting the fee as determined by the rules and regulations of the department is dispensing pursuant to a collaborative practice of pharmacy agreement, such person shall list the name of each pharmacist who signed the collaborative practice of pharmacy agreement to dispense pursuant to a drug dispensing permit. Any collaborating pharmacist shall assume the responsibilities for the counseling and dispensing functions and formulary restrictions as defined in the collaborative practice of

pharmacy agreement submitted to the board.

(4) If any changes in the permit are made, including, but not limited to, change in location, change in the name of the pharmacy, change in the pharmacist-in-charge, change in the practitioner-in-charge, change in the collaborating pharmacist, or change in ownership, the permittee shall notify the department within thirty days after such change and pay a fee determined by the department in rules and regulations. In addition the following procedures shall govern permit changes: (a) For a change in location, a pharmacy inspection and the issuance of an amended permit is required, (b) for a change in ownership, the applicant shall file a new permit application, and (c) for all other changes, the issuance of an amended permit is required. ~~If a person applying for a permit to conduct a pharmacy is not a licensed pharmacist in this state, the permit when issued shall also bear the name of the pharmacist licensed in this state designated on the application as being the pharmacist in charge and responsible for the practice of pharmacy in the establishment for which the permit is sought, except that a medical practitioner who dispenses drugs or medicinal substances to his or her own patients, with a pharmacy permit, may assume the same responsibilities as a pharmacist in charge. If such pharmacist in charge subsequently severs his or her position in the pharmacy, the permit shall be automatically suspended until such time as the person holding the permit informs the board of the name of the new pharmacist in charge designated as being responsible for the practice of pharmacy in the establishment for which the permit is sought, when, upon the recommendation of the board, an amended permit shall be issued by the department upon~~

~~return of the original permit and payment of a fee of fifty dollars.~~

~~No pharmacist shall be designated pharmacist in charge of more than one pharmacy, except that a pharmacist may be pharmacist in charge of two pharmacies if (1) the pharmacies are not open simultaneously and (2) at least one of the pharmacies is open no more than twenty hours per week, except that the board, with the approval of the department, may waive subdivisions (1) and (2) of this section on a case-by-case basis upon a showing of good cause.~~

Sec. 268. Section 71-1,147.06, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.06. Upon the death of a permittee, the board shall be notified within ~~fifteen~~ thirty days. All collaborative practice of pharmacy agreements shall cease upon the death of a collaborating person. If the pharmacy is to be continued by the estate or heirs or by a person representing the estate or heirs, an application for an amended permit shall be filed within thirty days accompanied by a fee as determined by the department in rules and regulations. ~~A fee of twenty-five dollars shall be paid for such amended permit. If any other person desires to continue the pharmacy, an application for a new permit shall be made as otherwise provided.~~

Sec. 269. Section 71-1,147.07, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.07. ~~If any person wants to conduct a pharmacy, an application shall be filed for a permit to conduct each pharmacy in this state. The fee for such initial permit shall be two hundred dollars, and the permit when issued shall be in force until~~

~~July 1 of the year following its issuance unless previously suspended or revoked for cause. The permit shall be renewed annually on or before July 1 of each year and shall not be transferable. The fee for such annual renewal shall be one hundred dollars and shall accompany the application.~~

~~Applications for renewal of permits shall be mailed by the department to each permitholder not later than June 1. If an application to renew a permit is received from the permittee after July 1, the board may impose a penalty equal to the renewal fee and the department shall refuse to issue the renewal permit until such penalty is paid in addition to the original renewal fee. Failure of any permitholder to receive an application blank shall not relieve him or her from the penalty hereby imposed.~~ Any person who desires a pharmacy permit, including a drug dispensing permit, shall submit an application to the state accompanied by the appropriate fee as set forth in department rules and regulations. Pharmacy permits, including drug dispensing permits, shall be valid until July 1 of the year following issuance unless previously suspended or revoked by the department. Each permit shall be renewed annually on or before July 1 of each year and shall not be transferable. The fee for annual renewal shall be set by department rules and regulations. The department shall mail applications for renewal of permits to each permittee not later than June 1. If a renewal application is received by the department after July 1, the department shall impose a late fee equal to the renewal fee and shall refuse to issue the renewal permit until such late fee is paid in addition to the original renewal fee. Failure of any permittee to receive a renewal

application or renewal notice shall not relieve him or her of the late fee imposed by this section.

Sec. 270. Section 71-1,147.08, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.08. (1) Any applicant for a new permit under section 71-1,147.07, shall file an application with the department, not less than thirty days prior to the anticipated opening date, and shall include the fee set by department rules and regulations. Before a permit may be granted by the department, an inspector of the board shall determine whether all of the requirements for such a permit have been fulfilled and shall conduct an onsite inspection of the permit site.

(2) Any hospital not required to obtain a pharmacy permit under section 71-1,147.01 shall file an application for initial inspection at least thirty days prior to the anticipated opening date and shall pay the fee set by department rules and regulations. Upon satisfactory completion of the initial inspection pursuant to subsection (1) of this section, the department shall add pharmacy to the list of services provided by the hospital on the hospital license.

(3) The department shall inspect each pharmacy permit site and drug dispensing site in this state at least once annually. Such inspection may be conducted by self-inspection or other compliance assurance modalities, when approved by the board, as authorized in department rules and regulations.

(4) Any permittee not successfully fulfilling the requirements of the board or the department shall be (a) reinspected by an inspector of the board to determine whether all

of the requirements for such permit have been fulfilled and (b) pay a reinspection fee as set by department rules and regulations.

(5) All fees collected, including reinspection fees, shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund. ~~Except as otherwise provided in section 71-1,147.01, a person desiring to open a new pharmacy shall file an application for a permit not less than thirty days prior to the contemplated opening date. Before a permit may be granted for the operation of a new pharmacy, an inspection shall be made by a duly qualified representative of the board to determine whether all of the requirements for such a permit have been fulfilled. If all of the requirements have been fulfilled, the department shall issue a permit for the operation of the new pharmacy. The fee for such permit, to accompany the application, shall be two hundred dollars.~~

~~(2) Any person desiring to open a new pharmacy who is not required to obtain a permit under section 71-1,147.01 shall file an application for initial inspection at least thirty days prior to the contemplated opening date. Upon satisfactory completion of the inspection the department shall issue the pharmacy an initial inspection certificate. The pharmacy shall post such certificate in a conspicuous place within view of the public. The fee for such certificates issued on the basis of an inspection shall be two hundred dollars. Within six months after May 10, 1983, the department shall issue an initial certificate to each pharmacy existing on May 10, 1983, which was initially inspected prior to such date and which was not required to obtain a permit pursuant to section 71-1,147.01.~~

~~(3) Any public or private hospital pharmacy which does~~

~~not display an initial inspection certificate issued pursuant to subsection (2) of this section shall be subject to a six-month suspension of the license of the public or private hospital.~~

~~(4) The department shall, except as provided in subsection (5) of this section, inspect each pharmacy in the state at least once every year. The department shall have primary authority to inspect pharmacies of public and private hospitals licensed by the department and shall coordinate routine inspections of pharmacies in hospitals licensed by the department. The board or its representatives shall immediately report any suspected violation of the minimum pharmacy standard to the department which shall take remedial action. Such violation, if proved, shall be grounds for denial, suspension, or revocation of the license of the hospital under section 71-2023.~~

~~(5) The department may, upon recommendation by the board, accept the inspection of a hospital pharmacy conducted by the Joint Commission on the Accreditation of Hospitals in lieu of the inspection required pursuant to subsection (4) of this section if the Director of Regulation and Licensure determines that the commission standards are equal to or more stringent than the standards of the department.~~

~~(6) The department shall charge an annual inspection fee for each pharmacy inspected pursuant to subsection (4) or (5) of this section which does not possess a permit issued pursuant to section 71-1,147.07. Such fee shall be one hundred dollars and shall be paid into the Nebraska Pharmaceutical Fund.~~

Sec. 271. The department, upon the recommendation of the board, shall be responsible for, but not limited to, the following:

(1) The licensing by examination or by transfer of applicants who are qualified to engage in the practice of pharmacy under the Pharmacy Practice Act;

(2) The renewal of licenses to engage in the practice of pharmacy;

(3) The enforcement of compliance with professional standards and rules and regulations of conduct of pharmacists engaged in the practice of pharmacy as established by the board;

(4) The enforcement of the Pharmacy Practice Act and the Uniform Controlled Substances Act relating to the conduct or competence of pharmacists, including the practice of telepharmacy in this state and the suspension, revocation, or restriction of licenses to engage in the practice of pharmacy or telepharmacy;

(5) The registration and regulation of the training, qualifications, and employment of pharmacist interns and pharmacy technicians;

(6) The collection of professional demographic data;

(7) The right to seize any such drugs or devices found by the board or department or its agents to constitute an imminent danger to the public health and welfare;

(8) Inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board, its officers, inspectors, and representatives, and the department shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to drugs, devices, and the practice of pharmacy;

(9) Any investigation, inquiry, or hearing which the department is empowered to hold or undertake may be held or undertaken by or before any member or members of the board or representative or representatives of the department and the finding or order of such member or members or representative shall be deemed to be the order of the department when approved and confirmed pursuant to sections 71-155 and 71-155.01;

(10) The department may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee or permittee at the time his or her license or permit is suspended or revoked or at the time the board or department refuses to renew his or her license or permit. Except as otherwise provided in this section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedure Act have expired or an appeal filed pursuant to the act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedure Act may order the department during the pendency of the appeal to sell sealed drugs or devices that are perishable. The proceeds of such a sale shall be deposited with the court;

(11) Except as otherwise provided to the contrary, the department shall exercise all of its duties, powers, and authority in accordance with the Administrative Procedure Act;

(12) In addition to the fees specifically provided for in the Uniform Licensing Law, the department may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by the Pharmacy Practice Act or its rules and regulations. Such services shall include, but

not be limited to, the following:

(a) Issuance of duplicate certificates or identification cards;

(b) Providing mailing lists or reports of public data maintained by or on behalf of the board;

(c) Providing copies of any documents;

(d) Certifying of documents;

(e) Conducting reinspections subsequent to failing the required annual inspection;

(f) Licensure transfer;

(g) Administering examinations to a licensure applicant; and

(h) Examination materials;

(13) The department shall accept any board decision on professional judgment and professional standards and shall enforce any such decision; and

(14) The department shall, upon the recommendation of the board, enter into agreements to supervise the administration of competence examinations or certificate examinations on behalf of the National Association of Boards of Pharmacy.

Sec. 272. Section 71-1,147.09, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.09. To protect the health, safety, and welfare of the public, to ensure to the greatest extent possible the accurate, efficient, and safe practice of pharmacy, to ensure that ~~prescribed~~ dispensed or administered drugs and devices conform to the medical orders authorizing their dispensing or administration, and to implement sections 28-1437~~,~~ ~~to 28-1439.01,~~ ~~71-1,142~~ ~~to~~

~~71-1,147.33,~~ 71-2401 to 71-2405, and 71-2501 to 71-2512, the Pharmacy Practice Act, the Mail Service Prescription Drug Act, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act, the department, upon the recommendation of the board, shall adopt and promulgate rules and regulations:

(1) For the enforcement of sections 71-1,142 to 71-1,147.38;

(2) To establish ~~minimum requirements regarding adequate facilities~~ standards for the ~~safe~~ storage, compounding, and dispensing of ~~narcotic drugs and other~~ drugs ~~requiring refrigeration or other special storage~~ or devices;

(3) To establish requirements for ~~For~~ equipment, facilities, and utilities for the ~~prescription department~~ site of dispensing;

(4) ~~To establish minimum standards governing sanitation, orderliness, cleanliness, library requirements, ventilation, and prescription and other record keeping;~~

~~(5) To establish minimum standards governing the definition and application of computers or other electronic record systems in pharmacy;~~

~~(6) To establish minimum standards for the practice of nuclear pharmacy;~~

~~(7) To establish minimum standards for the dispensing of drugs or devices in unit-dose and modified unit-dose containers;~~

~~(8) To establish minimum standards for compounding, dispensing, and administering sterile products;~~

~~(9) To establish minimum standards governing the inspection of pharmacies to demonstrate compliance with sections~~

~~28-1437 to 28-1439.01, 71-1,142 to 71-1,147.38, 71-2401 to 71-2405, and 71-2501 to 71-2512, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act and such rules and regulations as are adopted and promulgated by the department pursuant to such sections and acts. Such standards shall include, but not be limited to: (a) Criteria for successful completion of an opening inspection; (b) criteria for successful completion of an annual inspection; and (c) criteria for the issuance of a written warning notice listing specific violations to which the permittee shall respond in writing to the department, by the date stated on the warning notice, stating that the violations listed in the warning notice have been corrected;~~

~~(10) To establish minimum standards governing patient counseling, patient information, and communications to a patient;~~

~~(11) To establish minimum standards for the terms and provisions of the written control procedures and guidelines required by subsection (4) of section 71-1,147.33 as they relate to the qualifications, onsite training, functions, and supervision of supportive pharmacy personnel;~~

~~(12)~~ To establish standards governing pharmacist interns and pharmacy technicians;

(5) To establish standards for the provision of pharmaceutical care;

(6) To establish standards and guidelines for documentation, supervision, and verification; and

(7) To establish standards for dispensing pursuant to collaborative practice of pharmacy agreements. ~~To establish standards and guidelines for the identification of supportive~~

~~pharmacy personnel as such while they are performing duties in a pharmacy; and~~

~~(13) To establish minimum standards and guidelines for the documentation of the verification of the acts, tasks, or functions of supportive pharmacy personnel.~~

The ~~minimum~~ standards and requirements for the practice of pharmacy ~~and for public or private hospital pharmacies licensed by the department~~ dispensing pursuant to a collaborative practice of pharmacy agreement shall be consistent with the minimum requirements and standards established by the department under sections 71-2017 to 71-2029.

Sec. 273. Section 71-1,147.10, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.10. (1) The department ~~shall~~ may deny, limit, revoke, suspend, or refuse the renewal of an application for a pharmacy permit, including a drug dispensing permit, or may deny, limit, revoke, suspend, or refuse the renewal of a hospital license ~~to conduct a pharmacy, revoke or suspend a permit to conduct a pharmacy, refuse renewal of a permit to conduct a pharmacy, deny an application for a license to operate a hospital, revoke or suspend the license of a hospital, or refuse renewal of a hospital license~~ on any of the following grounds:

(a) The existence of conditions which cannot assure the safe practice of pharmacy;

(b) Violation of the Uniform Controlled Substances Act;

(c) Obtaining such permit or license by false representation or fraud;

(d) Misrepresentation or fraud in the conduct of the

permit;

(e) Violation of record-keeping requirements of the department;

(f) Aiding or abetting an unlicensed person to practice pharmacy; or

(g) Any violation of section 71-1,147. ~~Conviction of any crime involving moral turpitude;~~

~~(b) Obtaining a pharmacy permit or an inspection certificate by false representation or fraud;~~

~~(c) Operating a pharmacy or hospital pharmacy without a licensed pharmacist responsible for the practice of pharmacy;~~

~~(d) The compounding and dispensing of drugs or devices or the filling of a prescription by a person other than a licensed pharmacist or by an intern in pharmacy, without the presence of and the immediate personal supervision of a licensed pharmacist except as provided in sections 71-1,147.33 and 71-1,147.53;~~

~~(e) A conviction of a violation of sections 71-1,142 to 71-1,147.61 or of a felony or, if a natural person, the revocation or suspension of a license to practice pharmacy in this state;~~

~~(f) Unprofessional conduct which shall include, but not be limited to:~~

~~(i) Misrepresentation or fraud in the conduct of a pharmacy or hospital pharmacy;~~

~~(ii) Aiding or abetting an unlicensed person to practice pharmacy;~~

~~(iii) The dispensing over the counter without a prescription of a drug or device which under state or federal law or regulation is prohibited from being dispensed without a~~

~~prescription or the renewal of such a prescription without the authorization of the prescriber;~~

~~(iv) The dispensing of a different drug or device in place of the drug or device ordered or prescribed without the express permission of the person ordering or prescribing the same;~~

~~(v) Any fraudulent act in drug product selection whereby the purchaser is charged for the prescribed brand rather than the selected product which is deemed to be chemically and therapeutically equivalent;~~

~~(vi) Failure to account for significant, substantial shortages or overages of controlled substances; or~~

~~(vii) Use of supportive pharmacy personnel in violation of section 71-1,147.33;~~

~~(g) Violation of the rules and regulations governing the practice of pharmacy as adopted and promulgated under authority of section 71-1,147.09 by the department; and~~

~~(h) Suggesting, soliciting, ordering, assisting, or abetting a pharmacist in the commission of any of the offenses set forth in sections 71-147 and 71-148.~~

(2) ~~Nothing contained in this~~ This section shall not be construed to prohibit any hospital licensed by the department from establishing rules and regulations ~~regarding the method by which medical staff members shall agree to order or prescribe drugs or devices for patients of such hospitals~~ for developing, using, and enforcing a formulary.

(3) If the department determines to deny, limit, revoke, suspend, or refuse the renewal of the license of a hospital pursuant to this section, the procedures for such action in

sections 71-2023 to 71-2029 shall be followed.

(4) If the department determines to deny, limit, revoke, suspend, or refuse the renewal of a pharmacy permit, including a drug dispensing permit the department, ~~an application for a permit to or to revoke, suspend, or refuse renewal of a permit to conduct a pharmacy, it~~ shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 71-1,147.12. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department.

(5) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in

evidence in the discretion of the ~~Director of Regulation and Licensure~~ director. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure or reprimand against the permittee;

(b) Suspend judgment;

(c) Place the permittee on probation;

(d) Place a limitation or limitations on the permit and upon the right of the permittee to operate a pharmacy, or to dispense pursuant to a collaborative practice of pharmacy agreement, to the extent, scope, or type of operation for such time and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation. Such order of limitation may include, but is not limited to, a restriction on the ratio of pharmacy technicians to pharmacists, the ratio of pharmacist interns to pharmacists, or workload;

(e) Impose a civil penalty not to exceed ~~ten~~ one hundred thousand dollars;

(f) Enter an order of suspension of the permit;

(g) Enter an order of revocation of the permit; ~~and~~ or

(h) Dismiss the action.

(6) The permittee shall not operate a pharmacy or dispense pursuant to a collaborative practice of pharmacy agreement after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. Such permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such permit is revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement of any permittee whose permit shall have been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.

(7) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days after receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

(8) The Attorney General, upon the recommendation of the board, shall initiate criminal proceedings pursuant to section 71-167 against pharmacy technicians or individuals dispensing pursuant to a collaborative practice of pharmacy agreement ~~supportive pharmacy personnel or public health clinic workers~~ who knowingly perform tasks or functions which require the expertise or professional judgment of a pharmacist or are not included in the collaborative practice of pharmacy protocol provided to the board. When appropriate, the Attorney General, upon the recommendation of the board, shall initiate corresponding criminal charges against pharmacists, pharmacy owners, or other persons who knowingly permit ~~supportive pharmacy personnel or public health clinic workers~~ pharmacy technicians or individuals dispensing pursuant to a collaborative practice of pharmacy agreement to perform professional duties which require the expertise or professional judgment of a pharmacist.

Sec. 274. Section 71-1,147.11, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.11. (1) A petition for the revocation or suspension of a pharmacy permit or a drug dispensing permit ~~of a pharmacy~~ may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is conducting a pharmacy or dispensing. The petition shall be filed with the board ~~Board of Examiners in Pharmacy~~ and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (Name of permittee) to operate a pharmacy or dispense. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the ~~Board of~~

~~Examiners in Pharmacy~~ board, it shall be forwarded to the ~~Department of Health and Human Services Regulation and Licensure~~ department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges, referred to in subsection (1) of this section, may be served by any sheriff or constable or by any person especially appointed by the ~~Department of Health and Human Services Regulation and Licensure~~ department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee may not engage in the operation of a pharmacy after revocation of the permit or during the time for which it is suspended.

Sec. 275. Section 71-1,147.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.13. Except as otherwise specifically provided, any ~~Any~~ person who does or commits any of the acts or things prohibited by sections ~~71-1,142,~~ 71-1,143, 71-1,147 to 71-1,147.14, and 71-1,147.34 to 71-1,147.61 or otherwise violates any of the provisions thereof shall be guilty of a Class ~~II~~ I misdemeanor.

Sec. 276. Section 71-1,147.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.14. The ~~provisions of sections 71-1,142, 71-1,143, and 71-1,147 to 71-1,147.14~~ Pharmacy Practice Act shall not be construed to interfere with, obstruct, or apply to the sale

or purchase of medical products, compounds, vaccines, or ~~serums~~ sera used in the prevention or cure of animal diseases and maintenance of animal health ~~where~~ when such medical products, compounds, vaccines, or ~~serums~~ sera are not sold or purchased under direct, specific, written ~~prescription~~ medical order of a licensed veterinarian.

Sec. 277. Section 71-1,147.22, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.22. The department may, ~~Department of Health and Human Services Regulation and Licensure,~~ upon the recommendation of the ~~Board of Examiners in Pharmacy, shall have authority to~~ board, issue temporary educational permits to qualified applicants in accordance with the provisions of sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32.

Sec. 278. Section 71-1,147.23, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.23. (1) The holder of a temporary educational permit shall be entitled to engage in the practice of pharmacy while serving in a supervised educational program ~~or in an approved graduate pharmacy education program conducted by an accredited hospital or clinic in the State of Nebraska or by an accredited school or college of pharmacy in the State of Nebraska~~ approved by the board. The holder of a temporary educational permit shall not be qualified to engage in the practice of pharmacy outside of ~~the assigned training program or outside the confines of the accredited hospital or clinic or the accredited school or college~~ a supervised educational program.

(2) The holder of a temporary educational permit shall

not be considered to be licensed to engage in the practice of pharmacy for purposes of supervision of pharmacist interns or pharmacy technicians as defined in section 71-1,142.

(3) The holder of a temporary educational permit shall not be listed as a pharmacist-in-charge on any pharmacy permit, collaborative pharmacy practice agreement, or a collaborative practice agreement.

Sec. 279. Section 71-1,147.24, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.24. Before any temporary educational permit is issued pursuant to sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32, the ~~Department of Health and Human Services Regulation and Licensure~~ department, upon recommendation of the ~~Board of Examiners in Pharmacy~~ board, shall determine that the applicant for such permit (1) is a graduate of an accredited school or college of pharmacy or an accredited department of pharmacy of a university, ~~is of good moral character~~ and ~~that such applicant~~ (2) has otherwise met all of the requirements of sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32 relating to issuing any such permit.

Sec. 280. Section 71-1,147.25, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.25. Except as otherwise provided by law, the holder of any temporary educational permit shall be subject to all of the rules and regulations prescribed for pharmacists regularly licensed in this state ~~the State of Nebraska~~ and such other rules and regulations as may be adopted by the ~~Department of Health and Human Services Regulation and Licensure~~ department, upon the recommendation of the ~~Board of Examiners in Pharmacy~~ board, with

respect to such permits in order to carry out the purposes of sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32.

Sec. 281. Section 71-1,147.26, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.26. The duration of any temporary educational permit issued pursuant to sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32 shall be determined by the ~~Department of Health and Human Services Regulation and Licensure~~ department, upon the recommendation of the board, but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the ~~Department of Health and Human Services Regulation and Licensure but in no case shall it be renewed for more than five one-year periods~~ department, upon recommendation of the board. Any temporary educational permit shall become void, without hearing, upon the holder being licensed as a pharmacist in this state.

Sec. 282. Section 71-1,147.28, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.28. ~~Before granting any temporary educational permit, the Department of Health and Human Services Regulation and Licensure shall ascertain by evidence satisfactory to the department that an accredited hospital or clinic or an accredited school or college of pharmacy in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved. Any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved~~

~~graduate pharmacy educational program with respect to which such permit shall apply.~~ Any application for a temporary educational permit shall designate the approved supervised educational program to which such permit applies.

Sec. 283. Section 71-1,147.30, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.30. The recipient of a temporary educational permit shall pay an annual registration fee ~~of fifteen dollars or any additional amount deemed necessary by the Department of Health and Human Services Regulation and Licensure~~ as determined by the department, upon recommendation of the ~~Board of Examiners in Pharmacy~~ board, and established by departmental rule and regulation to carry out the provisions of sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32. In no case shall such fee exceed ~~twenty-five~~ one hundred dollars.

Sec. 284. Section 71-1,147.31, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.31. Any temporary educational permit granted under the authority of sections ~~71-1,147.17~~ 71-1,147.22 to 71-1,147.32 may be suspended, limited, or revoked by the ~~Department of Health and Human Services Regulation and Licensure~~ department, upon recommendation of the ~~Board of Examiners in Pharmacy~~ board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a regular license to engage in the practice of pharmacy could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by

the ~~Department of Health and Human Services Regulation and Licensure~~ department shall be held in the same manner as for the denial of a regular license to engage in the practice of pharmacy. The final order of the ~~Director of Regulation and Licensure~~ director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 285. Section 71-1,147.32, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.32. The holder of a temporary educational permit shall not be entitled to a license ~~for~~ to engage in the practice of pharmacy in ~~the State of Nebraska~~ this state unless and until such individual meets all of the requirements of law for issuing such regular license.

Sec. 286. Section 71-1,147.33, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.33. (1) Any pharmacy may employ registered pharmacy technicians ~~supportive pharmacy personnel~~ to perform authorized tasks and functions which do not require professional judgment and which are subject to verification to assist ~~in the preparation, compounding, dispensing, and distribution of drugs or devices, including, but not limited to, (a) maintaining patient drug records, (b) setting up, packaging, and labeling drug doses, (c) filling routine orders for stock supplies, and (d) mixing, labeling, and preparing drugs with parenteral fluids~~ a pharmacist in the practice of pharmacy.

(2) In order to be registered as a pharmacy technician in this state, an applicant shall (a) have submitted a complete application to the department, (b) have attained the age of

eighteen years, (c) have submitted an affidavit to the department stating that he or she has no prior conviction of a drug-related misdemeanor or felony, and (d) have paid the fees specified by department rules and regulations. No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be registered as a pharmacy technician. The department, upon recommendation of the board, shall establish by rule and regulation the requirements for registration of pharmacy technicians, including the information required on the application.

(3) ~~(2)~~ The ~~following~~ functions and tasks ~~shall be deemed to require the exercise of professional judgment by a pharmacist and~~ which shall not be performed by ~~supportive pharmacy personnel or by public health clinic workers~~ pharmacy technicians include, but are not limited to:

(a) Receiving verbal medical ~~oral~~ orders;

(b) Receiving verbal ~~for new prescriptions or oral~~ authorizations to refill prescriptions from a ~~medical~~ practitioner or his or her agent;

(c) ~~(b)~~ Providing patient counseling; ~~to a patient or caregiver regarding drugs or devices, either before or after they have been dispensed, or regarding any medical information contained in a patient's record maintained pursuant to sections 71-1,147.35 and 71-1,147.36;~~

(d) ~~(c)~~ Performing any evaluation or necessary clarification of a ~~prescription~~ medical order or performing any functions other than strictly clerical functions involving ~~the interpretation of a prescription prior to dispensing~~ a medical

order;

~~(d) Training, instructing, supervising, verifying, or directing~~ (e) Supervising or verifying the ~~duties of supportive pharmacy personnel~~ authorized tasks or functions of pharmacy technicians;

(f) ~~(e)~~ Interpreting or evaluating the ~~data~~ confidential information contained in a ~~patient's~~ patient record; ~~maintained pursuant to section 71-1,147.35;~~

~~(f) Performing or participating in any professional consultation with medical practitioners, nurses, other health care professionals, or the authorized agent of any of them, for the purpose of providing pharmaceutical care;~~

(g) Releasing any confidential information maintained by the pharmacy;

(h) Performing any professional consultations; ~~Verifying any prescribed drug or device prior to dispensing;~~ and

(i) ~~(h)~~ Determining, with regard to an individual ~~prescription, the chemically and therapeutically~~ medical order, the equivalent drug ~~products~~ product to be ~~drug product selected for~~ dispensed in place of the brand-name drug ~~products~~ product ordered in accordance with the ~~Nebraska~~ Drug Product Selection Act.

~~(3)~~ (4) The director or chief medical officer shall, upon the recommendation of the board, waive any of the restrictions in subsection (3) of this section for purposes of a scientific study approved by the board. Such study shall be based upon improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the

completion of the study. Nothing in this subsection shall require the board to approve any study proposed under this section.

(5) The pharmacy employing ~~supportive pharmacy personnel~~ pharmacy technicians shall be responsible for the supervision~~, onsite training,~~ and performance of ~~such personnel~~ all authorized tasks and functions performed by such pharmacy technicians.

(6) ~~(4)~~ The ~~pharmacist in charge~~ pharmacist-in-charge shall be responsible for the safe and competent practice of pharmacy in a facility and the establishment of written control procedures and guidelines governing the ~~qualifications, onsite training,~~ authorized tasks and functions, supervision, and verification of the performance of ~~supportive pharmacy personnel~~ pharmacy technicians. ~~The training of supportive pharmacy personnel shall include instruction, onsite in the facility where such personnel are to be employed, in the duties and responsibilities of such personnel under state law and in the nature of the functions which they may and may not perform.~~ The supervision of such ~~personnel~~ pharmacy technicians at the place of employment shall be performed by the ~~licensed pharmacist~~ supervising pharmacists who ~~is~~ are on duty in the facility with the ~~supportive pharmacy personnel as provided in subsection (5) of this section~~ pharmacy technicians.

~~(5)(a) The written control procedures and guidelines shall specify the means by which the employing pharmacy will determine that supportive pharmacy personnel are at least eighteen years of age, are high school graduates or possess an equivalent degree of education, and have never been convicted of any drug-related misdemeanor or felony.~~

~~(b) The written control procedures and guidelines shall specify that the onsite training of an individual employed in such capacity shall occur within the first month that such individual is employed, that the participation of individuals in such training during such period will be confirmed by the employing pharmacy, that all aspects of such training will be documented, and that the onsite training~~ (7)(a) Each pharmacy shall document in a manner and method specified in the written control procedures and guidelines, approved by the board, the basic competence of the pharmacy technician prior to performance of authorized tasks and functions by that technician. Such basic competence shall include, but not be limited to: ~~, basic instruction in the following:~~

(i) Basic pharmaceutical nomenclature;

(ii) Metric system measures, both liquid and solid;

(iii) The meaning and use of Roman numerals;

(iv) ~~Latin abbreviations~~ Abbreviations used for dosages and directions to patients;

(v) Basic medical terms, including terms relating to ailments, diseases, or infirmities;

(vi) ~~Instruction on the~~ The use and operation of automated ~~dispensing and record-keeping~~ pharmacy systems; ~~if used by the employing pharmacy;~~

(vii) ~~Discussion of applicable~~ Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such authorized tasks and functions, and the employment, use, and authorized tasks and functions of ~~supportive pharmacy personnel~~ pharmacy technicians; and

(viii) ~~Discussion of the~~ The contents of the written control procedures and guidelines.

~~Each employing pharmacy shall be responsible for confirming in a manner and method prescribed by the department that supportive pharmacy personnel employed by the pharmacy have achieved a basic level of competence in the areas included in the onsite training.~~

(b) ~~(c)~~ Written control procedures and guidelines shall ~~include a protocol specifying the~~ specify the authorized tasks and functions that ~~supportive pharmacy personnel will~~ pharmacy technicians may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means ~~employed~~ used by the employing pharmacy to ~~assure~~ verify that the prescribed drug~~, or~~ device, ~~the~~ dosage form, and ~~the~~ directions provided to the patient or caregiver conform to the ~~order that authorized~~ medical order authorizing the drug or device to be dispensed.

(c) ~~(d)~~ The written control procedures and guidelines shall specify the manner in which the ~~pharmacist responsible for the supervision of supportive pharmacy personnel will supervise such personnel and document the verification of the accuracy and completeness of their acts, tasks, and functions. Such verification shall include documentation that such pharmacist has checked the accuracy of all acts, tasks, or functions being performed by supportive pharmacy personnel~~ verification made prior to dispensing is documented.

(8) Each ~~(6) The~~ pharmacy or facility shall, ~~prior to the utilization of supportive pharmacy personnel,~~ before using pharmacy, technicians (a) file with the ~~department~~ board a copy of

its written control procedures and guidelines and (b) receive ~~.~~ ~~The board shall review for~~ approval ~~or disapproval~~ of its written control procedures and guidelines ~~for the use of supportive pharmacy personnel in all pharmacies which employ such personnel prior to their utilization~~ from the board. The board shall, within ninety days of the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request.

~~(7) Hospitals that have been utilizing supportive pharmacy personnel prior to June 11, 1993, may continue to use such personnel after such date but shall submit to the board the written control procedures and guidelines governing such supportive pharmacy personnel. A hospital that commences using supportive pharmacy personnel as provided in the rules and regulations adopted and promulgated by the department pursuant to sections 71-1,142 to 71-1,147.38 on or after such date shall meet the requirements of such sections.~~

~~(8)(a) If supportive pharmacy personnel~~ (9) Any hospital using pharmacy technicians prior to June 11, 1993, shall file a copy of written control procedures and guidelines with the board by February 1, 2000, or such hospital shall be in violation of subsection (3) of section 71-1,147.

(10) If pharmacy technicians perform functions requiring professional judgment and licensure as a pharmacist, perform functions not specified under approved written control procedures

and guidelines, or perform functions without supervision and such acts are known to the pharmacist supervising the ~~supportive pharmacy personnel~~ pharmacy technicians or the ~~pharmacist in charge~~ pharmacist-in-charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist supervising the ~~supportive pharmacy personnel~~ pharmacy technician or the ~~pharmacist in charge~~ pharmacist-in-charge or both pursuant to section 71-147 against whom disciplinary measures may be taken.

~~(b) Acts described in subdivision (a) of this subsection~~ Such acts may be grounds for the department, upon the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a full hearing the court shall either grant or deny the application. Such order shall continue until the court, after a like hearing, finds the basis for such order has been removed.

Sec. 287. Section 71-1,147.34, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.34. (1) Except as provided in ~~subdivision (7)~~ subsection (9) of section 71-1,147.33, disciplinary action may be taken in accordance with section 71-155 against the permit of the employing pharmacy or the license of the hospital or the pharmacist in charge for the failure to submit written control procedures and guidelines and to receive board approval prior to the employment of

~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technicians.

(2) Disciplinary action may be taken in accordance with such section against the supervising ~~pharmacist~~ pharmacists who ~~is~~ are on duty in the pharmacy and ~~is~~ are responsible for the supervision of ~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technicians for ~~his~~ ~~or~~ ~~her~~ their failure or the failure of the ~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technicians to follow approved written control procedures and guidelines.

(3) Disciplinary action may be taken in accordance with such section against the supervising pharmacist who is on duty in the pharmacy and is responsible for the supervision of ~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technicians for any failure to properly verify the accuracy and completeness of the ~~acts,~~ ~~tasks,~~ ~~or~~ authorized tasks and functions undertaken by ~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technicians, which failure results in a discrepancy in the dispensing process.

(4) Disciplinary action may be taken in accordance with such section against the license of a pharmacist in charge, the permit of the pharmacy, or the license of the hospital for the hiring and employment of an individual to serve as ~~supportive~~ ~~pharmacy~~ ~~personnel~~ pharmacy technician when the ~~pharmacist~~ pharmacist-in-charge, pharmacy, or hospital knew or reasonably should have known that such individual was not qualified by law to so serve.

Sec. 288. Section 71-1,147.35, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.35. (1)(a) ~~Prior~~ Each individual shall, prior to the dispensing or the delivery of each medical order ~~new~~ ~~or~~

~~refill prescription~~ to a patient or caregiver, ~~a pharmacist shall in all care settings~~ conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available ~~to the pharmacist~~ at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse or failure to adhere to prescribed pharmacotherapy.

(b) The individual described in subdivision (a) of this subsection ~~A pharmacist~~ conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner ~~physician~~ and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist or other dispensing individual relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards,

~~approved by the department upon the recommendation of the board, and consistent with the following:~~

~~(i) Compendia which shall consist of the following:~~

~~(A) American Hospital Formulary Service Drug Information;~~

~~(B) United States Pharmacopeia-Dispensing Information; and~~

~~(C) American Medical Association Drug Evaluations; and~~

~~(ii) The peer-reviewed medical literature~~ which standards may be recommended by the board.

(2)(a) Prior to the dispensing or delivery of each~~,~~ ~~new or refill prescription~~ medical order, the pharmacist, practitioner, or other dispensing individual shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist or dispensing individual shall be on elements which, in the exercise of the pharmacist's or dispensing individual's professional judgment, ~~the pharmacist deems~~ have been deemed significant for the patient or those elements which are specified in the collaborative practice of pharmacy agreement. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug;

(ii) The route of administration, dosage form, ~~dosage~~ dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance and the action required if such

effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The counseling provided for in subdivision (a) of this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver. All counseling regarding placebos shall support the intent of the practitioner in prescribing the placebo.

(d) Written information may be provided to the patient or caregiver to supplement the counseling provided for in subdivision (a) of this subsection but shall not be used as a substitute for such counseling. ~~If written information is provided, it shall also include all information found on the prescription label.~~

(e) Nothing in this subsection shall be construed to require a pharmacist or dispensing individual to provide the counseling called for by subdivision (a) of this subsection when:

(i) The patient or caregiver refuses such counseling;

(ii) The pharmacist, in his or her professional judgment, determines that such counseling may be detrimental to the patient's care or to the relationship between the patient and his or her ~~physician~~ practitioner;

(iii) The patient is a patient or resident of a health care facility licensed pursuant to sections 71-2017 to 71-2029 to

whom prescribed drugs or devices are administered by ~~a licensed or certified staff member or consultant or a certified physician's assistant~~ an employee of or a consultant to that facility; or

(iv) The ~~medical~~ practitioner ~~duly authorized to prescribe drugs or devices~~ specifies manually on the face of the written ~~prescription~~ medical order or by telephonic or electromagnetic transmission ~~communication~~ on each ~~prescription~~ medical order that there shall be no patient counseling unless he or she is contacted prior to such counseling. ~~The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing medical practitioner.~~

Sec. 289. Section 71-1,147.36, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.36. Confidential information ~~Information~~ with regard to a patient accessed by, maintained by, or transmitted to the ~~a~~ pharmacist ~~pursuant to sections 71-1,142 to 71-1,147.61~~ and found in the patient's records or which is communicated to the patient as part of patient counseling shall be privileged and confidential and may be released only to ~~(1)~~ the patient or, as the patient directs, to those practitioners and other authorized health care professionals, when, ~~the caregiver of the patient or others authorized by the patient or his or her legal representative, (2) a physician treating the patient, (3) other physicians or pharmacists when,~~ in the pharmacist's professional judgment, ~~of the pharmacist,~~ such release is necessary to protect the patient's health or well-being, ~~or (4)~~ and to such other persons, law enforcement officers, or governmental agencies authorized by law to receive

such confidential information.

Sec. 290. Section 71-1,147.39, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.39. (1)(a) All public health clinics which dispense legend drugs or devices shall either have a current permit to conduct a pharmacy or a current drug dispensing permit.

(b) Separate ~~drug dispensing permits~~ collaborative practice of pharmacy agreements shall be required for public health clinics maintained on separate premises even though operated under the same management. A separate drug dispensing permit shall not be required for an ancillary facility which offers intermittent services, which is staffed by personnel from the public health clinic site for which a ~~drug dispensing~~ permit to conduct a pharmacy has been issued or for which a collaborative practice of pharmacy agreement is in place, and at which no legend drugs or devices are stored.

(2) All dialysis drug or device distributors shall have a current drug dispensing permit.

(3) All persons dispensing medical gasses shall have either a valid pharmacy permit or a valid drug dispensing permit.

(4) Except for hospitals, all persons dispensing pursuant to a collaborative practice of pharmacy agreement shall have a valid drug dispensing permit issued pursuant to sections 71-1,147.07 and 71-1,147.08.

Sec. 291. Section 71-1,147.40, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.40. (1) A public health clinic in which dispensing is to occur shall ~~or dialysis drug or device distributor~~

~~may~~ apply to the department for a ~~drug~~ ~~dispensing~~ permit ~~required by section 71-1,147.39~~ pursuant to sections 71-1,147.07 and 71-1,147.08. The application shall include the address of the public health clinic, ~~or dialysis drug or device distributor,~~ the name and license number of ~~the~~ each pharmacist who will assume the responsibilities of ~~consultant~~ the collaborating pharmacist for the public health clinic ~~or dialysis drug or device distributor~~ as required by sections 71-1,147.50 and 71-1,147.51, and any other information required by the board and the required fee as set by the department in rules and regulations.

(2) All dialysis drug or device distributors shall apply to the department for a permit pursuant to sections 71-1,147.07 and 71-1,147.08. The application shall include the address of the dialysis drug or device distributor, the name and license number of each pharmacist who will assume the responsibilities of collaborating pharmacist for the dialysis drug or device distributor as required by sections 71-1,147.50 and 71-1,147.51, and any other information required by the board and the required fee as set by department rules and regulations.

(3) Except for hospitals, all persons dispensing pursuant to a collaborative practice of pharmacy agreement shall apply to the department for a permit pursuant to sections 71-1,147.07 and 71-1,147.08. The application shall include the address of the site where dispensing will occur, the name and license number of each pharmacist who will assume the responsibilities of collaborating pharmacist for collaborative practice of pharmacy as required by sections 71-1,147.50 and 71-1,147.51, the name and signature of each individual who will be dispensing pursuant to the

collaborative practice of pharmacy, any other information required by the board, and the required fee as set by department rules and regulations.

Sec. 292. Section 71-1,147.48, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.48. (1)~~(a)~~ Upon the recommendation of the board, which shall be based on the recommendations of the Public Health Clinic Formulary Advisory Committee, the director ~~Director of Regulation and Licensure~~ shall approve the formulary to be used by public health clinics operating with a drug dispensing permit.

~~(b)~~ ~~The~~ Such formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored by public health clinics operating with a drug dispensing permit, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

~~(c)~~ In no event shall the director approve for inclusion in the formulary any drug or device not approved by the ~~committee~~ Public Health Clinic Formulary Advisory Committee or exclude any of the provisions for patient instruction approved by the board.

~~(d)~~ Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

(a) ~~(i)~~ Controlled substances;

(b) ~~(ii)~~ Drugs with significant dietary interactions;

(c) ~~(iii)~~ Drugs with significant drug-drug interactions; and

(d) ~~(iv)~~ Drugs or devices with complex counseling profiles.

(2)~~(a)~~ Upon the recommendation of the board, the director ~~Director of Regulation and Licensure~~ shall approve ~~a~~ the formulary to be used by dialysis drug or device distributors operating with a drug dispensing permit.

~~(b) The~~ Such formulary ~~for a dialysis drug or device distributor~~ shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored by a dialysis drug or device distributor operating with a drug dispensing permit.

~~(c)~~ In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

~~(d)~~ Controlled substances shall not be eligible to be included in the formulary for dialysis drug or device distributors operating with drug dispensing permits.

(3) Upon the recommendation of the board which may include the recommendation of a formulary advisory committee appointed by the board, the director shall approve the formulary to be used by drug dispensing permittee and for any hospital with a collaborative practice of pharmacy agreement. Such formularies shall consist of a list of drugs or devices appropriate to the practice authorized by the collaborative practice of pharmacy agreement or any licensed staff member of a hospital operating pursuant to a collaborative practice of pharmacy agreement.

Sec. 293. Section 71-1,147.50, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.50. (1) The collaborating pharmacist for a

public health clinic dispensing pursuant to a drug dispensing permit shall be physically present in the public health clinic at least once every thirty days and shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic. The collaborating pharmacist shall conduct and document monthly inspections of inventory, record keeping, storage, security, dispensing, and labeling procedures of all drugs and devices.

(2) The collaborating pharmacist for a dialysis drug or device distributor dispensing pursuant to a drug dispensing permit shall be physically present in the dialysis drug or device distributor facility at least once every thirty days and shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor. The collaborating pharmacist shall conduct and document monthly inspections of all activities and responsibilities under his or her collaborative practice of pharmacy agreement as submitted to the board.

(3) The collaborating pharmacist for all drug dispensing permits or hospitals with a collaborative practice of pharmacy agreement shall be physically present onsite at the site of dispensing at least once every thirty days and shall be responsible for all activities and duties set forth in his or her collaborative practice of pharmacy agreement as submitted to the board. The collaborating pharmacist shall conduct and document monthly inspections of such activities and duties. ~~All public health clinics or dialysis drug or device distributors which dispense~~

~~legend drugs and devices pursuant to a drug dispensing permit shall have an actively practicing Nebraska-licensed pharmacist listed as the consultant pharmacist on the permit.~~

~~(2) The consultant pharmacist shall be physically in the public health clinic at least once every thirty days and shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic.~~

~~(3) The consultant pharmacist shall be physically in the dialysis drug or device distributor facility at least once every thirty days and shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor.~~

~~(4) The consultant pharmacist of a public health clinic shall conduct and document monthly inspections as detailed in subsection (1) of section 71-1,147.51 of inventory, record keeping, storage, security, dispensing, and labeling procedures of all drugs and devices.~~

~~(5) The consultant pharmacist of a dialysis drug or device distributor shall conduct and document monthly inspections with respect to all activities and responsibilities detailed in subsection (2) of section 71-1,147.51.~~

Sec. 294. Section 71-1,147.51, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.51. The collaborating pharmacist for each drug dispensing permit or hospital with a collaborative practice of pharmacy agreement shall approve and maintain a policy and procedure manual governing those aspects of the practice of

pharmacy covered by the collaborative practice agreement. ~~(1) The consultant pharmacist listed on a drug dispensing permit of a public health clinic shall approve and maintain a policy and procedure manual governing the storage, control, distribution, and dispensing of drugs and devices within the clinic. The policy and procedure manual shall include, but not be limited to, directions for and documentation of the following:~~

~~(a) Consultant pharmacist monthly inspection reports;~~

~~(b) Labeling;~~

~~(c) Storage and security of drugs and devices;~~

~~(d) Proper patient instruction;~~

~~(e) Formulary;~~

~~(f) Library resources;~~

~~(g) Record keeping, to include the medical chart;~~

~~(h) Drug recall procedures;~~

~~(i) Policies for licensed or certified health care staff; and~~

~~(j) Policies for public health clinic workers.~~

~~The consultant pharmacist shall approve, with documentation, supplemental information and instructions regarding approved formulary drugs and devices dispensed to patients.~~

~~The consultant pharmacist shall approve, with documentation, the proficiency of public health clinic workers at the public health clinic for the dispensing of authorized refills of oral contraceptives at least annually. Documentation of proficiency shall be maintained in the employee's personnel file and the policy and procedure manual.~~

~~(2) The consultant pharmacist listed on a drug dispensing~~

~~permit of a dialysis drug or device distributor shall be responsible for the following:~~

~~(a) To ensure that only drugs and devices that have been ordered by an authorized prescriber are provided to patients;~~

~~(b) To ensure that no drugs or devices are dispensed to a patient until adequate training in the proper use and administration of such drugs or devices has been completed;~~

~~(c) To ensure that proper documentation of drug and device distributions and deliveries is maintained by the dialysis drug or device distributor and is made available upon request to practitioners involved in the care of the patient and to the board; and~~

~~(d) To maintain a policy and procedure manual which is available for inspection by personnel of the board. The policy and procedure manual shall include (i) a quality assurance program with which to monitor the qualifications, training, and performance of personnel and (ii) a written protocol for the implementation of the delivery system, including methods for supervising drug or device deliveries to patients. With respect to the written protocol for the implementation of the delivery system, the following procedures shall be included:~~

~~(A) Personnel of the dialysis drug or device distributor shall assemble products to be delivered pursuant to the prescriber's order. In assembling such products for delivery, the dialysis drug or device distributor shall take steps necessary to assure the following:~~

~~(I) The code numbers and quantities of the products assembled match the code numbers identified in the prescriber's~~

~~order; and~~

~~(II) Any products bearing an expiration date have a minimum of three full months of shelf-life remaining;~~

~~(B) An inspection of all drugs and devices shall be made to ensure compliance with the prescriber's order. Dialysis drug or device distributor sealed case lots shall be labeled with the name of the patient, the date, and a control number that serves as a unique patient-identifier number; and~~

~~(C) Products ordered by a prescriber and provided to patients shall be delivered either by personnel of the dialysis drug or device distributor or by a carrier authorized by the dialysis drug or device distributor.~~

Sec. 295. Section 71-1,147.52, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.52. The collaborating ~~consultant~~ pharmacist or the on-call pharmacist for ~~the public health clinic operating with~~ a drug dispensing permit or a hospital with a collaborative practice of pharmacy agreement shall not be held liable for acts or omissions on the part of ~~a public health clinic worker or of licensed or certified health care staff~~ any individual who is dispensing pursuant to a collaborative practice of pharmacy agreement. ~~The public health clinic for which a public health clinic worker is working shall be liable for acts or omissions on the part of the public health clinic worker.~~

Sec. 296. Section 71-1,147.53, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.53. Under a drug dispensing permit issued to a public health clinic, approved formulary drugs and devices may be

dispensed by a public health clinic worker, a practitioner, or a nurse ~~or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist~~ if:

(1) The initial dispensing of all ~~prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant~~ prescriptions is conducted by a practitioner or a nurse;

(2) The drug or device is dispensed pursuant to a prescription written on site by a ~~medical~~ practitioner;

(3) The only prescriptions to be refilled ~~under the drug dispensing permit are prescriptions~~ are for oral contraceptives;

(4) ~~Prescriptions~~ Dispensed prescriptions are accompanied by patient instructions and written information approved by the ~~Director of Regulation and Licensure~~ director;

(5) The dispensing of authorized refills of oral contraceptives is done by a practitioner, a nurse, or ~~licensed health care professional listed in subdivision (1) of this section or by~~ a public health clinic worker who meets the requirements provided in sections 71-1,147.54 to 71-1,147.56;

(6) All drugs or devices dispensed from a ~~drug dispensing permit site~~ public health clinic are ~~prepackaged~~ packaged by the manufacturer, distributor, or packager for dispensing to the patient or are packaged at a public health clinic with a valid pharmacy permit or a valid drug dispensing permit ~~or at a public~~

~~health clinic~~ by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic when dispensing occurs;

(7) All drugs and devices stored, received, or dispensed by public health clinics are properly labeled at all times. ~~Properly~~ For purposes of this section, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer, distributor, or packager;

(b) The lot number and expiration date from the manufacturer, distributor, or packager or, if ~~prepackaged~~ packaged by a pharmacist, the lot number and calculated expiration date; ~~.~~ ~~Calculated expiration date means an expiration date on the prepackaged product which is not greater than twenty-five percent of the time between the date of repackaging and the expiration date of the bulk container nor greater than six months from the date of repackaging;~~

(c) Directions for patient use;

(d) The quantity of drug ~~inside~~ in the package;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper ~~drug compliance~~ adherence with ordered pharmacotherapy;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing ~~health care professional~~ practitioner;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 71-1,147.48; and

(10) At any time that dispensing is occurring from a public health clinic dispensing under a drug dispensing permit, the ~~consultant~~ collaborating pharmacist ~~for the public health clinic~~ or any other actively practicing pharmacist ~~licensed to practice pharmacy in Nebraska is~~ shall be available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The ~~consultant pharmacist or practicing~~ pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Sec. 297. Section 71-1,147.54, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.54. No person shall act as a public health clinic worker ~~in a public health clinic~~ or as a dialysis drug or device distributor worker ~~for a dialysis drug or device distributor~~ unless the person:

(1) Is at least eighteen years of age;

(2) ~~Has earned a high school diploma or the equivalent;~~

~~(3)~~ Has completed approved training as provided in section 71-1,147.55; and

~~(4)~~ (3) Has demonstrated proficiency as provided in section 71-1,147.56.

Sec. 298. Section 71-1,147.55, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.55. (1) A ~~consultant~~ collaborative pharmacist shall conduct the training of public health clinic workers. ~~The~~ Such training shall be approved in advance ~~according to the standards determined~~ by the ~~board~~ department upon the recommendation of the ~~Public Health Clinic Formulary Advisory Committee~~ board. The board shall base its recommendation upon the standards determined by the Public Health Clinic Formulary Advisory Committee. ~~The training shall consist of at least six hours of classroom instruction, including, but not limited to, the following:~~

~~(a) Procedures for dispensing authorized refills of oral contraceptives;~~

~~(b) Federal and state laws regarding drug dispensing;~~

~~(c) Proper labeling of oral contraceptives;~~

~~(d) Proper record keeping of refilled prescriptions;~~

~~(e) The actions, drug interactions, and effects of oral contraceptives;~~

~~(f) Use of Volumes I and II of the United States Pharmacopeia-Dispensing Information;~~

~~(g) Proper pharmacist referral;~~

~~(h) Procedures for reaching the on-call pharmacist;~~

~~(i) Storage and security of approved formulary drugs and devices; and~~

~~(j) Patient information.~~

(2) A ~~consultant~~ collaborating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the department upon the recommendation of the board. ~~consist of, but not be limited to, the following:~~

~~(a) An overview of peritoneal dialysis therapies;~~

~~(b) The proper labeling and inspection of home patient orders;~~

~~(c) The requirements of applicable Nebraska law; and~~

~~(d) Patient information.~~

(3) The public health clinic, the dialysis drug or device distributor, and the ~~consultant~~ collaborating pharmacist shall be responsible to assure that approved training has occurred and is documented. ~~Documentation of training shall be maintained in the employee's personnel file and in the policy and procedure manual.~~

Sec. 299. Section 71-1,147.56, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.56. (1)~~(a)~~ The public health clinic worker shall demonstrate proficiency to a collaborating pharmacist, according to the standards determined by the department, ~~to the consultant pharmacist upon completion of training. Documentation of proficiency shall be maintained in the employee's personnel file and in the policy and procedure manual.~~

~~(b)~~ upon the recommendation of the board. The collaborating pharmacist shall document proficiency for each public health clinic worker. The public health clinic worker shall be supervised ~~with documentation by one of the licensed health care professionals specified in subdivision (1) of section 71-1,147.53~~

by a practitioner, pharmacist, or nurse for the first month that ~~dispensing of authorized~~ he or she is dispensing refills of oral contraceptives. ~~occurs.~~ The public health clinic for which a public health clinic worker is working shall be liable for acts or omissions on the part of the public health clinic worker.

~~(c)~~ Following initial training and proficiency demonstration, the public health clinic worker shall demonstrate continued proficiency ~~to the consultant pharmacist~~ at least annually or as requested by the ~~consultant~~ collaborating pharmacist.

~~(d)~~ The public health clinic worker shall attend a two-hour inservice program regarding oral contraceptives taught by a pharmacist at least ~~once a year, and more often as necessary, with documentation of attendance maintained in the employee's personnel file and in the policy and procedure manual~~ annually. Documentation of inservice training shall be maintained in the public health clinic worker's employee file.

(2) ~~Following initial training and proficiency demonstration, the~~ The dialysis drug or device distributor worker shall demonstrate proficiency to the ~~consultant~~ collaborating pharmacist ~~upon completion of the training. Documentation of proficiency shall be maintained in the worker's personnel file and in the policy and procedure manual. Training and proficiency demonstration shall be conducted annually~~ according to the standards determined by the department, upon the recommendation of the board. The collaborating pharmacist shall document proficiency for each dialysis drug or device distributor worker. The dialysis drug or device distributor for which a dialysis drug or device

distributor worker is working shall be liable for any acts or omissions on the part of the dialysis drug or device distributor worker. Following initial training and proficiency demonstration, the dialysis drug or device distributor worker shall demonstrate continued proficiency at least annually as requested by the collaborating pharmacist. The dialysis drug or device distributor worker shall attend annually training programs taught by a pharmacist. Documentation of such training shall be maintained in the dialysis drug or device distributor worker's employee file.

Sec. 300. Section 71-1,147.57, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.57. A collaborating pharmacist shall conduct the training of all practitioners and nurses dispensing at a public health clinic. The training shall be approved by the department upon the recommendation of the board. The board shall base its recommendation upon the standards determined by the Public Health Clinic Formulary Advisory Committee. ~~Each person licensed to practice medicine and surgery or as a physician assistant and each person certified as a nurse practitioner or nurse midwife who works in a public health clinic operating with a drug dispensing permit shall have two hours of training provided by a licensed, actively practicing pharmacist in the following:~~

~~(1) Procedures for dispensing initial prescriptions and authorized refills of oral contraceptives;~~

~~(2) Procedures for dispensing approved drugs and devices;~~

~~(3) Federal and state laws regarding drug dispensing;~~

~~(4) Proper labeling of oral contraceptives and approved drugs and devices;~~

~~(5) Proper record keeping of initial and refilled prescriptions;~~

~~(6) Use of Volumes I and II of the United States Pharmacopeia-Dispensing Information;~~

~~(7) Proper pharmacist referral;~~

~~(8) Procedures for reaching the on-call pharmacist;~~

~~(9) Storage and security of approved formulary drugs and devices; and~~

~~(10) Patient information.~~

Sec. 301. Section 71-1,147.59, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.59. (1) The Public Health Clinic Formulary Advisory Committee is created. The committee shall consist of eight members as follows:

(a) Two members designated by the board;

(b) Two members who are employees of the department with knowledge of and interest in reproductive health and sexually transmitted diseases;

(c) Two members who are pharmacists ~~licensed to practice pharmacy~~ in this state and who are selected by the ~~Director of Regulation and Licensure~~ director. The Nebraska Pharmacists Association may submit to the director a list of five persons of recognized ability in the profession. If such a list is submitted, the director shall consider the names on such list and may appoint one or more of the persons so named. The director may appoint any qualified person even if such person is not named on the list submitted by the ~~association~~ Nebraska Pharmacists Association; and

(d) Two members who are employees of public health

clinics which are or will be operating with drug dispensing permits and who are selected by the director from names recommended by such public health clinics.

(2) Designations ~~Initial designations~~ and recommendations shall be made and submitted to the director ~~within thirty days after July 16, 1994. Subsequent designations and recommendations shall be submitted~~ in July prior to the third quarter meeting of the committee.

~~(3)~~ Members shall serve for terms of two years each beginning with the third quarter meeting. ~~, except that one-half of the initial members appointed to the committee, as designated by the director, shall serve for terms of three years each.~~ Members may serve for consecutive terms as approved by the director. The director may remove a member of the committee for inefficiency, neglect of duty, or misconduct in office.

(3) The board may appoint any other formulary advisory committees as it deems necessary for the determination of formularies for drug dispensing permittees and hospitals with a collaborative practice of pharmacy agreement, except that no formulary advisory committee shall be named to assist in the determination of a formulary for dialysis drug or device distributors dispensing pursuant to a drug dispensing permit. ~~in the manner provided in section 71-1,147.43.~~

Sec. 302. Section 28-425, Reissue Revised Statutes of Nebraska, is amended to read:

~~28-425.~~ (1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of

whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Sec. 303. Section 71-1536, Revised Statutes Supplement, 1998, is amended to read:

71-1536. (1) In the operation or management of housing projects or other shelter, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease dwelling accommodations therein only to persons of low income, elderly or handicapped persons of low income, and displaced persons in need;

(b) There shall be no discrimination in the eligibility or occupancy of tenants on the basis of race, sex, marital status, religion, color, creed, national origin, or ancestry;

(c) The authority shall not accept any person as a tenant in any dwelling in a housing project if the persons who would

occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the authority determines, which determination shall be conclusive, to be necessary in order to enable such persons to secure safe, sanitary, and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living for themselves;

(d) An authority may rent or lease to a tenant a dwelling consisting of a number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding;

(e) An authority shall fix income limits for occupancy and rents after taking into consideration (i) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the person and (ii) the economic factors which affect the financial stability and the solvency of the project;

(f) An authority may accept as a tenant any displaced person or persons in need, regardless of income, but in no event shall such person or persons remain as a tenant or tenants of the authority for more than a period of six months unless such persons also qualify as persons of low income or elderly or handicapped persons of low income;

(g) All persons of low income, elderly or handicapped persons of low income, or displaced persons in need shall be entitled to the benefits of the Nebraska Housing Authorities Law, and the authority may adopt and promulgate rules and regulations consistent with the purposes of the law concerning eligibility and

occupancy of any housing project or other such shelter;

(h) Nothing in the Nebraska Housing Authorities Law shall prohibit the right of an authority to inquire into the financial condition, family composition, and medical, personal, and employment history of any tenant or prospective tenant; and

(i) The authority shall prohibit subletting by tenants.

(2) Nothing contained in subsection (1) of this section or section 71-1535 shall be construed as limiting the power of an authority with respect to the housing project to vest in an obligee the right in the event of default by the authority to take possession of a housing project or to cause the appointment of a receiver thereof, or to acquire title thereto, through foreclosure proceedings, free from all restrictions imposed by subsection (1) of this section or section 71-1535.

(3) Nothing contained in the Nebraska Housing Authorities Law shall be construed as limiting the power of an authority of a city of the primary class to rent real property acquired from the federal government which is not, in the determination of such authority, by reason of its cost or the nature of its construction, suitable for low-income housing, to such tenants for such rentals as the authority shall determine reasonable, based upon the cost and the nature of the construction of the property, until such time as the property is adapted to low-income housing or disposed of by such authority.

(4) An authority may adopt and promulgate from time to time rules and regulations consistent with federal and state laws, rules, and regulations and the purposes of the Nebraska Housing Authorities Law concerning the termination of tenancy. Any tenant

so terminated shall be sent a written notice of termination setting out the reasons for such termination, and any tenant served with a notice shall be given the opportunity to contest the termination in an appropriate hearing by the authority if required by state or federal law. A tenant may contest the termination in any suit filed by the authority in any court for recovery of possession of the premises. Such notice may provide that if the tenant fails to pay his or her rent or comply with any covenant or condition of his or her lease, or the rules and regulations of such authority, or cure a violation or default thereof, as the case may be, as specified in such notice, or follow the procedure for a hearing as set forth in the notice, all within the time or times set forth in such notice, the tenancy shall then be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this subsection, an authority may file suit against any tenant for recovery of possession of the premises and may recover the same as provided by law. If a tenant has created or maintained a threat constituting a serious and clear danger to the health or safety of other tenants or authority employees, an authority may, after three days' written notice of termination and without a hearing, file suit against any such tenant for recovery of possession of the premises. The tenant shall be given the opportunity to contest the termination in the court proceedings. A serious and clear danger to the health or safety of other tenants or authority employees shall include, but not be limited to, any of the following activities of the tenant or of any other person on the premises with the consent of the tenant:

(a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat to use an illegal firearm or other weapon; or (c) possession of a controlled substance by the tenant or any other person on the premises with the consent of the tenant if the tenant knew or should have known of the possession by such other person of a controlled substance, unless such controlled substance was obtained directly from or pursuant to a valid prescription or order by a practitioner as defined in section ~~28-401~~ 59 of this act while acting in the course of his or her professional practice.

(5) An authority may adopt and promulgate from time to time rules and regulations consistent with the purposes of the Nebraska Housing Authorities Law concerning personal property of tenants and other persons located in projects of the authority, and if such personal property is not removed from a dwelling unit at the time of the termination of the lease, at the time of vacation or abandonment of the dwelling unit, or at the time of the death of any tenant, an authority may remove the same and store such property at the tenant's risk and expense. In the event that possession of such personal property is not taken by the tenant or other person authorized by law to take possession within forty-five days after such termination, vacation, or abandonment, and any storage removal charges remain unpaid, then the authority may, at its option, dispose of the personal property in any manner which the authority deems fit, except that any proceeds from the disposal of such personal property shall be paid to the general fund of the body which created the authority. No tenant or other person shall have any cause of action against the authority for such removal or

disposition of such personal property.

Sec. 304. Section 71-2023, Revised Statutes Supplement, 1998, is amended to read:

71-2023. The Department of Health and Human Services Regulation and Licensure shall issue licenses for the operation of health care facilities subject to sections 71-2017 to 71-2029 and the Nebraska Nursing Home Act which are found to comply with such sections or act and such rules and regulations as are lawfully adopted and promulgated by the department. As a condition for licensure or renewal of a license, such institutions shall submit to the department a list of the names of all individual owners, partners, limited liability company members, and members of boards of directors owning or managing such institutions and any other persons with financial interests or investments in such institutions. Every such licensed institution shall have a sign prominently posted in the lobby or entry area of such institution. Such sign shall be in the form of a printed card with a minimum height of twenty inches and a width of fourteen inches with each letter to be a minimum of one-fourth inch in height. The sign shall contain the name, street address, city, state, and zip code of all individual owners, partners, limited liability company members, and members of the board of directors owning or managing such institution, except that the name of any owner who owns less than five percent of the institution shall not be included on the sign.

The department may (1) deny, suspend, or revoke licenses of such health care facilities or (2) take other disciplinary measures against the license of any such health care facility,

other than a hospital, on any of the following grounds:

(a) Violation of any of the provisions of sections 71-2017 to 71-2029 or the Nebraska Nursing Home Act or the rules and regulations lawfully adopted and promulgated pursuant thereto;

(b) Permitting, aiding, or abetting the commission of any unlawful act;

(c) Conduct or practices detrimental to the health or safety of patients, residents, and employees of the facility, except that this subdivision shall not be construed to have any reference to healing practices authorized by law;

(d) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to such facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations promulgated by the Department of Health and Human Services;

(e) Discrimination or retaliation against an employee or resident of any such facility who has presented a grievance or information to the office of the state long-term care ombudsman;

(f) Violation of the Long-Term Care Facility Emergency ~~Box~~ Drug Act;

(g) Failure to file a report required by section 71-168.02; or

(h) Violation of the Medication Aide Act.

If the Department of Health and Human Services Regulation and Licensure determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by either registered or certified mail, a notice setting forth the particular reasons for

the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. Thereupon the applicant or licensee shall be given a fair hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-2027. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations.

Other disciplinary actions taken shall be in accordance with the applicable provisions of sections 71-2023.01 to 71-2023.07 or 71-6025 to 71-6031.

Sec. 305. Section 71-2024, Revised Statutes Supplement, 1998, is amended to read:

71-2024. (1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any hospital, health care facility, or human services facility as defined in sections 71-2017 to 71-2029 and 71-8301 to 71-8314

consistent with the Medication Aide Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, and sections 28-1437, 28-1439.02 to 28-1439.05, 71-2017 to 71-2029, 71-20,115 to 71-20,119, 71-6601 to 71-6615, and 71-8301 to 71-8314, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of hospitals, health care facilities, and human services facilities, except nursing homes, designed to further the accomplishment of the purposes of such acts, law, and sections. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department. The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing homes. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

(2) The department may accept accreditation by a recognized independent accreditation body, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the hospital, health care facility, or human services facility complies with the rules, regulations, and standards adopted and promulgated pursuant to subsection (1) of this section.

(3) In addition to the authority to inspect in section 71-2022, the department may adopt and promulgate rules and regulations which allow for recognition of alternative methods for assessing the compliance of the hospital, health care facility, or

human services facility with the rules, regulations, and standards adopted and promulgated pursuant to subsection (1) of this section.

Sec. 306. Section 71-2404, Reissue Revised Statutes of Nebraska, is amended to read:

71-2404. (1) Notwithstanding any other provision of law to the contrary, whenever a duly authorized representative of the board or the department finds, or has probable cause to believe, that any drug or device is adulterated or misbranded as defined in sections 176 and 220 of this act, he or she shall affix to such drug or device a tag or other appropriate marking (a) giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed and (b) warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, the department, any of their agents, or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board, the department, or any of their agents or, after summary proceedings have been instituted, without permission from the court.

(2) When a drug or device detained or embargoed under subsection (1) of this section has been declared by such representative to be adulterated or misbranded, the department shall, as soon as practical thereafter, petition the judge of the district court in which jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the department shall direct the immediate removal of the tag or other marking.

(3) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a representative of the board or the department and all court costs and fees and storage and other proper expenses shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board or department representative. Expense of such supervision shall be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid. For purposes of this subsection, the supervision may be carried out by an individual who is not licensed to engage in the practice of pharmacy.

(4) The Attorney General shall cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law when the board reports any violation of this section. Nothing in this subsection shall be construed to require the board to report violations if the board believes the public interest will be adequately served in the circumstances by a suitable written notice or warning. ~~Any drug which is adulterated or misbranded within the meaning of sections 71-2401 and 71-2402, and which is sold, offered for sale or~~

~~delivered within this state, shall be liable to be proceeded against where the same is found and seized for confiscation by a process of libel for condemnation. If such drug is condemned as being adulterated or misbranded or of a poisonous or deleterious character, within the meaning of said sections, the same shall be disposed of by destruction or sale as the court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of this state, and such goods shall not be sold in any jurisdiction contrary to the provisions of said sections or the laws of that jurisdiction. Any libel proceeding in rem, under the provisions of this section, may be joined with any criminal prosecution in personam or may be prosecuted separately.~~

Sec. 307. Section 71-2405, Reissue Revised Statutes of Nebraska, is amended to read:

71-2405. No person shall, within this state, manufacture for sale therein or have in his or her possession with intent to sell, offer or expose for sale, or sell any remedies, ~~medicines or~~ drugs, or devices which are adulterated or misbranded. Any person convicted of violating section 71-2404 or 71-2405 shall be guilty of a Class I misdemeanor for the first violation and shall be guilty of a Class IV felony for the second or any subsequent violation. ~~within the meaning of sections 71-2401 and 71-2402.~~

Sec. 308. Section 71-2407, Reissue Revised Statutes of Nebraska, is amended to read:

71-2407. (1) ~~No~~ A nonresident pharmacy or person operating outside of the State of Nebraska shall not ship, mail, or in any manner deliver dispensed prescription drugs into the State of Nebraska unless such nonresident pharmacy or person:

(a) ~~Is~~ If an individual, is licensed as a pharmacist in the United States;

(b) Has filed with the Department of Health and Human Services Regulation and Licensure evidence of a pharmacy license or permit issued by, ~~and~~ valid, and in good standing in the state in which the person or pharmacy is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(c) Is located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services Regulation and Licensure, with the approval of the Board of ~~Examiners~~ ~~in~~ Pharmacy, to be substantially equivalent to the requirements contained in ~~sections 71-1,142 to 71-1,147.38~~ the Pharmacy Practice Act;

(d) Has designated the Secretary of State as his, her, or its agent for service of process in this state; and

(e) Has paid a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in the State of Nebraska as established in and at the times provided for in section 71-1,147.07. Such fees shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund.

(2) This section shall not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

~~(3) For purposes of this section and section 71-2408, prescription drug shall have the definition found in section 71-1,142.~~

Sec. 309. Section 71-2408, Reissue Revised Statutes of

Nebraska, is amended to read:

71-2408. The Department of Health and Human Services Regulation and Licensure, upon the recommendation of the Board of ~~Examiners~~ ~~in~~ Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Prescription Drug Act. If the Attorney General has reason to believe that a nonresident pharmacy or an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Sec. 310. Section 71-2409, Reissue Revised Statutes of Nebraska, is amended to read:

71-2409. The Department of Health and Human Services Regulation and Licensure shall, upon the recommendation of the Board of ~~Examiners~~ ~~in~~ Pharmacy, adopt and promulgate rules and regulations, including rules and regulations for enforcement, necessary to carry out the Mail Service Prescription Drug Act.

Sec. 311. Section 71-2410, Reissue Revised Statutes of Nebraska, is amended to read:

71-2410. Sections 71-2410 to 71-2417 shall be known and may be cited as the Long-Term Care Facility Emergency ~~Box~~ Drug Act.

Sec. 312. Section 71-2412, Reissue Revised Statutes of Nebraska, is amended to read:

71-2412. Each long-term care facility intending to have emergency drugs available in the facility shall meet all the following requirements: ~~(1) Each institutional pharmacy shall be directed by a pharmacist, referred to as the pharmacist in charge~~

~~as defined in section 71-1,142 who is licensed to engage in the practice of pharmacy in this state.~~

~~(2) For an institution that does not have an institutional pharmacy or during such times as an institutional pharmacy may be unattended by a pharmacist, drugs may be administered to residents of the institution by authorized personnel of the institution from the contents of emergency boxes located within such facility if such drugs and boxes meet all of the following requirements:~~

~~(a)~~ (1) All emergency ~~box~~ drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacist with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

~~(b)~~ (2) Emergency ~~boxes~~ drugs in an emergency box shall be stored in a medication room or other secured area within the ~~institution~~ long-term care facility. Only the supplying pharmacist or authorized personnel of the ~~institution~~ long-term care facility shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency ~~box~~ drugs;

~~(c)~~ (3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacist;

~~(d)~~ (4) The expiration date of an emergency box shall be

the earliest date of expiration of any drug contained in the box;

~~(e)~~ (5) All emergency boxes shall be inspected by the supplying pharmacist or another pharmacist designated by the supplying pharmacist at least once every thirty days to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the ~~institution~~ long-term care facility for a period of ~~two~~ five years;

~~(f)~~ (6) An emergency box shall not contain any multiple dose vials and shall not contain more than ten drugs which are controlled substances; and

~~(g)~~ (7) All emergency drugs ~~in emergency boxes~~ shall be in the original manufacturer's containers or shall be repackaged by the supplying pharmacist and shall include the manufacturer's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. ~~For purposes of the Emergency Box Drug Act, the calculated expiration date shall not be greater than twenty-five percent of the time between the date of the repackaging and the expiration date of the bulk container or six months from the date of repackaging, whichever is shorter.~~

Sec. 313. Section 71-2413, Reissue Revised Statutes of Nebraska, is amended to read:

71-2413. (1) The supplying pharmacist and the medical director and quality assurance committee of the ~~institution~~ long-term care facility shall jointly determine the drugs, ~~by identity and quantity~~ listed on the formulary approved by the board, to be included in ~~the~~ any emergency ~~boxes~~ box for that

long-term care facility. ~~Such drugs shall then be approved in advance of placement in emergency boxes by the Board of Examiners in Pharmacy, unless such drugs are included on a general list of drugs previously approved by the Board of Examiners in Pharmacy for use in emergency boxes. The Board of Examiners in Pharmacy may adopt a general list of drugs to be included in emergency boxes.~~ The supplying pharmacist shall maintain a list of emergency ~~box~~ drugs in the pharmacy of the supplying pharmacist which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. ~~The supplying pharmacist shall obtain a receipt upon delivery of the emergency box to the institution signed by the director of nursing of the institution which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacist for a period of two years.~~

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a ~~valid prescription~~ medical order. Whenever access to the emergency box occurs, the ~~valid prescription~~ medical order and proof of use shall be provided to the supplying pharmacist and shall be recorded on the resident's medical record by authorized personnel of the ~~institution~~ long-term care facility. Removal of any drug from an emergency box by authorized personnel of the institution shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration,

the date the drug was used, the time of usage, the disposal of waste, if any, and the signature of the authorized personnel. ~~The form shall be maintained at the institution for a period of twenty-four months from the date of removal with a copy of the form to be provided to the supplying pharmacist.~~

(3) Whenever an emergency box is opened the supplying pharmacist shall be notified ~~by the charge nurse or the director of nursing of the institution~~ within twenty-four hours and the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box within seventy-two hours.

(4) Upon ~~the occurrence of~~ the expiration ~~date~~ of any drug in the emergency box, the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. The expired drug shall be immediately destroyed within the long-term care facility by a pharmacist, and such destruction shall be witnessed and documented by such pharmacist. If the expired drug is a controlled substance listed in section 28-405, it shall be destroyed pursuant to subdivision (3)(e)(i)(D) of section 28-414. Records pertaining to the documentation of expired drugs which are destroyed shall be maintained at the long-term care facility for a period of five years from the date of destruction with a copy of such records to be provided to the supplying pharmacist. Emergency drugs shall be considered inventory of the pharmacy of the supply pharmacist until such time as they are removed for administration or destruction.

~~(5) Immediately upon replacement of an expired drug by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, the expired drug being replaced shall be immediately destroyed within the institution by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, with such destruction witnessed and documented by authorized personnel of the institution. Records pertaining to the documentation of expired drugs which are destroyed by the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall be maintained at the institution for a period of twenty-four months from the date of such destruction, with a copy of such records to be provided to the supplying pharmacist. Drugs in emergency boxes shall be considered inventory of the pharmacy of the supplying pharmacist until such time as they are removed for administration to a resident of the institution or pursuant to subsection (4) of this section.~~

~~(6)~~ Authorized personnel of the ~~institution~~ long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacist upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility ~~institution~~ shall be recorded. ~~and maintained at the institution for a period of twenty-four months from the date of examination.~~

(6) ~~(7)~~ The supplying pharmacist and the medical director and quality assurance committee of the ~~institution~~ long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Sec. 314. Section 71-2414, Reissue Revised Statutes of Nebraska, is amended to read:

71-2414. The department shall have:

(1) ~~the~~ The authority to inspect any emergency box or emergency drugs; and

(2) Access ~~access~~ to the records of the supplying pharmacist and the ~~institution~~ long-term care facility for inspection.

Refusal to allow the department to inspect an emergency box or emergency drugs or to have access to records shall be grounds for a disciplinary action against the supplying pharmacist or the license of the ~~institution~~ long-term care facility.

Sec. 315. Section 71-2415, Reissue Revised Statutes of Nebraska, is amended to read:

71-2415. (1) In no event shall ~~a supplying pharmacist return drugs placed in an emergency box to the institutional pharmacy or to his or her pharmacy~~ emergency drugs placed in an emergency box be returned to any pharmacy.

(2) To protect the public safety, dispensed drugs or devices may be returned to the dispensing facility only under the following conditions:

(a) For immediate destruction by a pharmacist;

(b) In response to a recall by the manufacturer, packager, or distributor;

(c) If a defective or malfunctioning device; or

(d) For return from a long-term care facility for credit if:

(i) The dispensed drug or devise is not a controlled

substance;

(ii) The pharmacist has sole discretion as to whether or not to accept the return of the dispensed drug or device;

(iii) Prior to return, the dispensed drug or device remained in the control of the long-term care facility at all times;

(iv) The dispensed drug or device is in the original, unopened, labeled container with a tamper evident seal intact as dispensed by the pharmacy. The container shall bear the expiration date or calculated expiration date and the lot number; and

(v) The tablets or capsules shall have been dispensed in a unit dose, tamper evident container which is impermeable to moisture and is approved by the Board of Pharmacy.

(3) Under no circumstances can returned, dispensed drugs or devices be retained in inventory nor made available for subsequent dispensing, except for drugs returned pursuant to subsection (2)(d) of this section.

(4) Violation of this section shall be a Class I misdemeanor.

(5) This section shall not apply to dispensed drugs or devices maintained within a hospital for persons registered as patients and confined to the hospital.

Sec. 316. Section 71-2416, Reissue Revised Statutes of Nebraska, is amended to read:

71-2416. (1) The department, upon the recommendation of the board, may limit, suspend, or revoke the authority of a supplying pharmacist to maintain emergency drugs in a long-term care facility ~~boxes in an institution~~ for any violation of the

Long-Term Care Facility Emergency ~~Box~~ Drug Act, Pharmacy Practice Act, Uniform Licensing Law, the Uniform Controlled Substances Act. The department, upon the recommendation of the board, may limit, suspend, or revoke the authority of a long-term care facility ~~an institution~~ to maintain ~~an~~ emergency drugs ~~box~~ for any violation of the ~~act~~ Long-Term Care Facility Emergency Drug Act, Pharmacy Practice Act, Uniform Licensing Law, the Uniform Controlled Substances Act. The taking of such action against the supplying pharmacist or ~~institution~~ long-term care facility or both shall not prohibit the department from taking other disciplinary actions against the supplying pharmacist or the ~~institution~~ long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacist to maintain emergency drugs in a long-term care facility ~~boxes in an institution~~ or to limit, suspend, or revoke the authority of a long-term care facility ~~an institution~~ to maintain ~~an~~ emergency ~~box~~ drugs, it shall send to the supplying pharmacist or ~~institution~~ long-term care facility a notice of such determination. The notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacist or ~~institution~~ long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying pharmacist or ~~institution~~ long-term care facility shall be given a

fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacist or ~~institution~~ long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Long-Term Care Facility Emergency ~~Box~~ Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacist or ~~institution~~ long-term care facility shall not maintain an emergency box after his, her, or its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department. Any such application for reinstatement by a supplying pharmacist may not be received by the department unless accompanied by a written recommendation of reinstatement by the Board of ~~Examiners~~ ~~in~~ Pharmacy.

(5) Any person who commits any of the acts prohibited by the ~~act~~ Long-Term Care Facility Emergency Drug Act shall be guilty

of a Class ~~II~~ I misdemeanor. The department may maintain an action in the name of the state against any person for maintaining ~~an~~ emergency drugs ~~box~~ in violation of the act. Each day a violation continues shall constitute a separate violation.

Sec. 317. Section 71-2417, Reissue Revised Statutes of Nebraska, is amended to read:

71-2417. Any emergency ~~box~~ drug containing a controlled substance, as listed in section 28-405, which is maintained at a long-term care facility ~~an institution~~ shall be exempt from the provisions of ~~subdivisions (4)(f) and (g)~~ subdivision (3)(f) of section 28-414.

Sec. 318. Section 71-2501, Reissue Revised Statutes of Nebraska, is amended to read:

71-2501. The word poison~~, within the meaning of sections 71-2501 to 71-2510,~~ shall include: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, ~~biniodide of mercury~~ mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, homatrophine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, ~~scopola~~ scopolamine, solanum, stramonium,

staphisagra, strophanthus veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, ~~glacia~~ glacial acetic acid; trichloracetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous; paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate. The term poison shall not be construed to include agricultural or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, fire protection purposes, or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug and Cosmetic Act or the Federal Insecticide Act. Poison shall not be construed to include preparations prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state. It shall also not include preparations for the destruction of rodents, predatory animals, or noxious weeds. ~~;~~ ~~PROVIDED, that sections 71-2501 to 71-2511 shall not apply to the~~

~~sale of patent or proprietary medicines in the original package of the manufacturer, when labeled in conformity with the provisions of section 71-2502.~~

Sec. 319. Section 71-2506, Reissue Revised Statutes of Nebraska, is amended to read:

71-2506. Whenever, in the judgment of the Director of Regulation and Licensure, it shall become necessary for the protection of the public, to add any poison, not specifically enumerated in section 71-2501, the ~~Department of Health and Human Services Regulation and Licensure~~ director shall have printed a revised schedule of all poisons coming under section 71-2501. The ~~department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the~~ revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the director under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501. Whenever the director shall propose to bring any additional poisons under such section, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the director. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the director shall determine to be reasonably calculated to notify the various interested parties. The director shall have the power to adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary. Any person aggrieved by any order of the director passed pursuant to this section may appeal such order, and the appeal shall be in

accordance with the Administrative Procedure Act.

Sec. 320. Section 71-2509, Reissue Revised Statutes of Nebraska, is amended to read:

71-2509. The Director of Regulation and Licensure may, by regulation, whenever in his or her opinion such action becomes necessary for the protection of the public, prohibit the sale of any poison, subject to the provisions of this section, except upon the ~~original written~~ medical order ~~or prescription of those practitioners of the healing arts, named in section 71-102, who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501~~ of a practitioner. Whenever in the opinion of the director it is in the interest of the public health, he or she is empowered to adopt and promulgate rules and regulations, not inconsistent with the provisions of sections 71-2501 to 71-2511, further restricting or prohibiting the retail sale of any poison. The rules and regulations ~~must~~ shall be applicable to all persons~~, alike,~~ and it shall be the duty of the director, upon request, to furnish any person, authorized by sections 71-2501 to 71-2511 to sell or dispense any poisons, with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by ~~said~~ such sections.

Sec. 321. Section 71-5401, Reissue Revised Statutes of Nebraska, is amended to read:

71-5401. (1) If a drug product has been prescribed with a notation that no drug product selection is permitted for a patient who has a contract under which he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall

make reimbursements on the basis of the brand-name price and not on the basis of the equivalent-drug-product price unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) All prescriptions dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import on the medical order or so designates verbally or electromagnetically.

(3) This section shall not require a pharmacy to charge less than its established minimum price for the filling of any prescription.

(4) This section shall not be construed to prohibit any hospital licensed by the department from establishing rules and regulations for developing, using, and enforcing a formulary. ~~The Legislature declares it to be the public policy of this state that its citizens receive chemically equivalent and bioequivalent drug products at the most reasonable price consistent with a high standard of pharmacy practice.~~

Sec. 322. Section 71-5403, Revised Statutes Supplement, 1998, is amended to read:

71-5403. (1) A pharmacist may drug product select except when:

(a) A practitioner designates that no drug product selection is permitted; or

(b) A patient or caregiver instructs otherwise.

(2) A practitioner may specify in writing, verbally or by electromagnetic transmission, that there shall be no drug product selection for the specified brand name drug in any medical order.

(3) A pharmacist shall not drug product select a product unless:

(a) The product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager provides reasonable services, as determined by the board, to accept the return of products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains recall capabilities for unsafe or defective drugs. ~~Except as limited (a) by this section, when a medical practitioner designates that no drug product selection is permitted, and (b) by subsection (1) of section 71-5404, unless the purchaser instructs otherwise, the pharmacist may drug product select a drug product with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, bioequivalent, except that products designated as controlled substances as listed in Schedule I of section 28-405 shall not be interchanged. It shall be the responsibility of the purchaser or the ultimate user to advise or instruct the pharmacist that he or she does not desire drug product selection, and it shall not be mandatory for the pharmacist to drug product select against his or her professional judgment.~~

~~(2) The department may adopt and promulgate necessary rules and regulations, upon the joint recommendation of the Board of Examiners in Medicine and Surgery and the Board of Examiners in Pharmacy, relating to (a) bioavailability, (b) fraudulent or~~

misleading advertising pertaining to drug product selection, and (c) the control of conditions in which the prescribing practitioner or purchaser should be advised when drug product selection has been made by the pharmacist.

(3) A medical practitioner duly authorized to prescribe drugs, medicinal substances, or controlled substances may specify in writing or by telephonic communication on each prescription that there shall be no drug product selection for the specified brand name drug in any prescription. The phrase no drug product selection or the notation N.D.P.S. shall be specified on the prescription form or orally communicated by the medical practitioner. The pharmacist shall note N.D.P.S. on the face of the prescription if such is communicated orally by the prescribing medical practitioner.

(4) Each pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that this pharmacy may be able to select a less expensive drug product which is bioequivalent to the one prescribed by the prescriber unless the purchaser does not approve. The sign shall be provided by the department, at a cost to the pharmacy which shall not exceed the actual cost of printing to the department, and the printing on the sign shall be in block letters not less than one inch in height.

(5) A pharmacist shall not drug product select a product under the provisions of this section unless: (a) The product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit; (b) the product has been labeled with an expiration date; (c) the manufacturer,

~~distributor, or packager provides reasonable services to accept return products that have reached their expiration date; and (d) the manufacturer, distributor, or packager maintains recall capabilities for unsafe or defective drugs.~~

~~(6)(a) Except as provided in subdivision (b) of this subsection, a pharmacist shall not drug product select a product under this section that is:~~

~~(i) An enteric-coated tablet or capsule;~~

~~(ii) An injectable suspension other than an antibiotic or insulin;~~

~~(iii) A controlled-release product;~~

~~(iv) A suppository containing active ingredients for which systemic absorption is necessary; or~~

~~(v) A different delivery system for aerosol and nebulizer drugs.~~

~~(b) A pharmacist may drug product select a product set forth in subdivision (a) of this subsection if such product has been determined by the Food and Drug Administration to be bioequivalent and therapeutically equivalent to the prescribed drug.~~

~~(7) The department shall maintain a list of drug products for which bioequivalency has been demonstrated and documented either federally or by the state.~~

Sec. 323. Section 71-5408, Reissue Revised Statutes of Nebraska, is amended to read:

71-5408. Sections 71-5401 to 71-5408 shall be known and may be cited as the ~~Nebraska~~ Drug Product Selection Act.

Sec. 324. Section 71-6045, Reissue Revised Statutes of

Nebraska, is amended to read:

71-6045. The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a ~~registered~~ licensed pharmacist in the State of Nebraska;

(5) One member shall be a representative of the Department of Health and Human Services with interest in or responsibilities for aging programs;

(6) One member shall be a representative of the Department of Health and Human Services Regulation and Licensure;

(7) One member shall be a representative of the Department of Health and Human Services Finance and Support;

(8) One member shall be representative of an agency of state or local government, other than the Department of Health and Human Services Regulation and Licensure, with interests in or responsibilities for nursing homes or programs related thereto;

(9) Four members shall be laypersons representative of the public;

(10) Two members shall be administrators or owners of proprietary nursing homes; and

(11) Two members shall be administrators or owners of voluntary nursing homes.

Sec. 325. Section 71-6721, Revised Statutes Supplement, 1998, is amended to read:

71-6721. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under sections 71-1908 to 71-1917;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Direction and monitoring means the acceptance of

responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means an entity defined in section 71-2017.01 or an entity or person certified by the Department of Health and Human Services Regulation and Licensure or the Department of Health and Human Services Finance and Support to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-2017.01;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the Department of Health and Human Services Regulation and Licensure;

(16) Nonprescription drug has the definition found in section ~~71-1,142~~ 223 of this act;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in subdivision (6), (10), (11), or (20) of section 71-2017.01;

(18) Prescription drug has the definition found in section ~~71-1,142~~ 238 of this act;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Sec. 326. Section 71-7405, Reissue Revised Statutes of Nebraska, is amended to read:

71-7405. Board shall mean the Board of ~~Examiners~~ ~~in~~ Pharmacy.

Sec. 327. (1) The transfer of original prescription information for any noncontrolled drugs and controlled substances

listed in Schedule III, IV, or V of section 28-405 for the purpose of dispensing is permissible between pharmacies on a one-time basis subject to the following:

(a) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use real-time, on-line electromagnetic transmission;

(b) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription;

(c) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, address, and Drug Enforcement Administration number, if a controlled substance, of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, and the date of transfer;

(d) The receiving pharmacist or pharmacist intern indicates transfer on the record of the transferred prescription;

(e) The transferred prescription shall include the following information:

(i) The date of issuance of the original prescription;

(ii) The original number of refills authorized;

(iii) The date of original dispensing;

(iv) The number of valid refills remaining and the date of last refill; and

(v) The name, address, and Drug Enforcement Administration number, if a controlled substance, of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, and the date of transfer; and

(f) Both the original and transferred prescription shall be maintained for a period of five years from the date of transfer.

(2) The transfer of refill prescription information for the purpose of dispensing is permissible between a pharmacist or pharmacist intern and another pharmacist on a one-time basis subject to the following:

(a) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, address, and Drug Enforcement Administration number, if a controlled substance, of the pharmacy to which the one-time refill was transferred, the name of the pharmacist or pharmacist intern receiving the information, and the date of the transfer;

(b) The receiving pharmacist or pharmacist intern indicates transfer on the record of the transferred prescription and that such prescription may not be refilled; and

(c) Each pharmacist monitors the patient for adherence with ordered pharmacotherapy.

Sec. 328. Section 71-7412, Reissue Revised Statutes of Nebraska, is amended to read:

71-7412. ~~Wholesale drug distribution shall mean distribution of prescription drugs to a person other than a consumer or patient.~~ Wholesale drug distribution shall not include:

(1) Intracompany sales which shall mean any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(2) The purchase or other acquisition of a prescription

drug or device by a hospital or other health care entity that is a member of a group purchasing organization from such organization or from other members of such organization for the use of the purchasing or acquiring hospital or entity to the extent otherwise permitted by law;

(3) The sale, purchase, or trade of or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or another governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(4) The sale, purchase, transfer, or trade of, or an offer to sell, purchase, transfer, or trade, a prescription drug or device for the alleviation of a temporary shortage between any of the following: Holders of pharmacy permits, holders of drug dispensing permits, holders of hospital licenses, and practitioners;

(5) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug or device among hospitals or other health care entities that are under common control;

~~(5) The sale, purchase, or trade of or an offer to sell, purchase, or trade a drug for emergency medical reasons;~~

(6) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a drug pursuant to a ~~prescription~~ medical order;

(7) The distribution of prescription drug or device samples by representatives of a manufacturer, distributor, packager, or ~~of~~ ~~a~~ wholesale drug distributor; ~~or~~

(8) The sale, purchase, or trade of blood and blood components intended for transfusion; or

(9) The transportation of prescription drugs or devices by any carrier for hire or by any person or entity hired solely to transport prescription drugs or devices.

Sec. 329. Section 71-7416, Revised Statutes Supplement, 1998, is amended to read:

71-7416. No wholesale drug distributor, manufacturer, dispenser, packager, facility, practitioner, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed pursuant to the Wholesale Drug Distributor Licensing Act except transfers for emergency medical reasons, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy permit, holder of a hospital pharmacy inspection certificate, or ~~medical~~ practitioner as defined in section ~~71-1,142~~ 237 of this act during the immediately preceding calendar year, and except as otherwise provided in the act.

Sec. 330. Section 71-7419, Reissue Revised Statutes of Nebraska, is amended to read:

71-7419. (1) As a condition for receiving and retaining a wholesale drug distributor license issued pursuant to the Wholesale Drug Distributor Licensing Act, an applicant shall have and continuously maintain:

(a) Acceptable storage and handling conditions and facilities standards;

(b) ~~Minimum liability~~ Liability and other insurance as

may be required under any applicable federal or state law;

(c) A security system which includes after-hours, central alarm, or comparable entry-detection capability, restricted access to the premises, adequate outside perimeter lighting, comprehensive employment applicant screening, and safeguards against employee theft;

(d) An electronic, manual, or other reasonable system of records describing all wholesale drug distribution activities governed by the act for the ~~two-year~~ five-year period following disposition of each product. Such records shall be reasonably accessible during an inspection by the department;

(e) Officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling capable of conducting business according to sound financial practices and state and federal law;

(f) Complete, updated information to be provided the department about each wholesale drug distribution facility to which the application applies, including all pertinent information relating to ownership, key personnel, and facilities deemed necessary by the department for enforcement of the act. Any changes in such information shall be submitted at the time of the license renewal or within twelve months from the date of such change, whichever occurs first;

(g) Written policies and procedures which assure reasonable preparation for, protection against, and handling of any facility security or operation problem, including those caused by natural disaster or government emergency, inventory inaccuracies, product shipping and receiving, control of outdated or other

unauthorized products, appropriate disposition of returned goods, and product recalls;

(h) Sufficient inspection procedures for all incoming and outgoing product shipments; and

(i) Operations in compliance with all federal requirements applicable to wholesale drug distribution.

(2) The department and the board shall consider at least the following factors in reviewing the qualifications of an applicant for a wholesale drug distributor license:

(a) Any conviction of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(b) Any felony conviction of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drug, including controlled substances;

(f) Compliance by the applicant with licensing requirements under previously granted licenses, if any;

(g) Compliance by the applicant with requirements to maintain and make available to the department or to federal, state,

or local law enforcement officials records required by the act; and

(h) Any other factors or qualifications the department and board consider relevant to and consistent with the public health and safety, including whether the granting of the license would be in the public interest.

Sec. 331. Section 71-7420, Reissue Revised Statutes of Nebraska, is amended to read:

71-7420. A wholesale drug distributor license shall expire on July 1 of each year and may be renewed. The license shall not be transferable. The annual renewal fee shall be ~~not less than one hundred dollars and not more than three hundred dollars~~ set by department rule and regulation. The department shall mail an application for renewal to each licensee not later than June 1 of each year. If an application for renewal is received from the licensee after July 1, the department may impose a penalty equal to the renewal fee and the department shall refuse to issue the license until such penalty is paid in addition to the renewal fee. Failure to receive an application for renewal shall not relieve the licensee from the penalty imposed by this section.

Fees collected under the Wholesale Drug Distributor Licensing Act shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund and expended as provided in section 71-1,147.02.

Sec. 332. Section 71-7424, Reissue Revised Statutes of Nebraska, is amended to read:

71-7424. (1) The department may conduct inspections during normal business hours upon premises purporting or appearing to be used by a wholesale drug distributor in this state. Persons

conducting such inspections shall show appropriate identification prior to being permitted access to a wholesale drug distributor's premises and delivery vehicles.

(2) A wholesale drug distributor may keep records regarding purchases and sales at a location apart from its principal office or the location at which ~~the~~ prescription drugs and devices are stored and from which they are shipped, if the records can be made available for inspection within two working days after a request by the department and the board. The records may be kept in any form permissible under federal law applicable to record keeping for prescription drugs and devices.

Sec. 333. Section 71-7426, Reissue Revised Statutes of Nebraska, is amended to read:

71-7426. (1) The department, upon issuance of a final disciplinary action against a person who violates any provision of section 71-7416, shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person. ~~, not to exceed ten thousand dollars.~~

(2) The department, upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-7424, shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand

dollars times the number of such disciplinary actions. ~~, not to exceed ten thousand dollars.~~ All fines collected under this section shall be remitted to the State Treasurer for credit to the permanent school fund.

Sec. 334. Section 77-4301, Reissue Revised Statutes of Nebraska, is amended to read:

77-4301. For purposes of sections 77-4301 to 77-4316:

(1) Controlled substance shall mean any drug or substance, including an imitation controlled substance, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Nebraska law. Controlled substance shall not include marijuana;

(2) Dealer shall mean a person who, in violation of Nebraska law, manufactures, produces, ships, transports, or imports into Nebraska or in any manner acquires or possesses six or more ounces of marijuana, seven or more grams of any controlled substance which is sold by weight, or ten or more dosage units of any controlled substance which is not sold by weight;

(3) Imitation controlled substance shall have the meaning as provided in section ~~28-401~~ 39 of this act; and

(4) Marijuana shall have the meaning as provided in section ~~28-401~~ 45 of this act.

Sec. 335. Section 79-267, Reissue Revised Statutes of Nebraska, is amended to read:

79-267. The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a

vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;

(3) Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section ~~28-401~~ 15 of this act, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103 or being under the influence of a controlled substance or alcoholic liquor;

(7) Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault shall mean sexual assault in the first degree and sexual assault in the second degree as defined in sections 28-319 and 28-320, as such sections now provide or may hereafter from time to time be amended;

(9) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(10) A repeated violation of any rules and standards validly established pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities.

Sec. 336. Section 79-296, Reissue Revised Statutes of Nebraska, is amended to read:

79-296. (1) In addition to the penalties provided in the Uniform Controlled Substances Act and section 79-267, any person under nineteen years of age who is a student at any public elementary, secondary, or postsecondary educational institution in

this state who possesses, dispenses, delivers, or administers anabolic steroids as defined in section ~~28-401~~ 8 of this act in violation of the Uniform Controlled Substances Act may be prohibited from participating in any extracurricular activities for not more than thirty consecutive days for the first offense. For the second or any subsequent offense, the student may be barred from participation in such activities for any period of time the institution deems appropriate pursuant to the written policy of the institution.

(2) Any sanction imposed pursuant to this section shall be in accordance with a written policy of the institution. The institution shall post the written policy in a conspicuous place and shall make a copy of the policy available to any student upon request.

Sec. 337. Section 81-687, Reissue Revised Statutes of Nebraska, is amended to read:

81-687. The ~~pharmacist in charge~~ pharmacist-in-charge of each pharmacy located within the state or doing business in the state shall file a semiannual report with the department listing persons to whom the pharmacist has dispensed drugs on the list of drugs required to be reported under this section for Parkinson's disease. The report shall include the name, address, and social security number of the person for whom the drugs were prescribed and the name and address of the prescribing physician. The department shall issue a list of drugs used for the treatment of Parkinson's disease to be reported under this section, shall review and revise the list annually, and shall distribute the list to each pharmacy located within the state or doing business in the state.

Sec. 338. This act becomes operative on January 1, 2000.

Sec. 339. Original sections 20-313, 20-322, 27-504, 28-402, 28-409, 28-413, 28-415, 28-417, 28-418, 28-425, 28-427, 28-432, 28-433, 28-437, 28-438, 28-440 to 28-442, 28-444, 28-1438.01, 37-1254.01, 37-1254.07, 48-232, 48-1102, 48-1902, 71-101.01, 71-105, 71-107, 71-111, 71-112, 71-112.03, 71-113, 71-114, 71-115.01, 71-116, 71-117 to 71-120, 71-122 to 71-124.01, 71-128, 71-129, 71-131, 71-132, 71-138 to 71-140, 71-143, 71-144, 71-150, 71-153, 71-156, 71-161.02 to 71-161.04, 71-161.07, 71-161.09, 71-161.12 to 71-161.15, 71-161.17, 71-161.19, 71-161.20, 71-168.01, 71-170, 71-171.01, 71-1,143, 71-1,144.01, 71-1,144.03, 71-144.04, 71-1,145, 71-1,147 to 71-1,147.02, 71-1,147.06, 71-1,147.07, 71-1,147.09 to 71-1,147.11, 71-1,147.13, 71-1,147.14, 71-1,147.22 to 71-1,147.26, 71-1,147.28, 71-1,147.30 to 71-1,147.36, 71-1,147.52, 71-2404, 71-2405, 71-2407 to 71-2410, 71-2412 to 71-2417, 71-2501, 71-2506, 71-2509, 71-5401, 71-5408, 71-6045, 71-7405, 71-7412, 71-7415, 71-7419 to 71-7420, 71-7424, 71-7426, 77-4301, 79-267, 79-296, and 81-687, Reissue Revised Statutes of Nebraska, and sections 28-401, 28-405 to 28-408, 28-410 to 28-412, 28-414, 28-416, 28-428, 28-431, 28-1437, 71-101, 71-108, 71-110, 71-121, 71-121.01, 71-141, 71-147, 71-148, 71-151, 71-155, 71-155.01, 71-161.10, 71-162, 71-168, 71-168.02, 71-171.02, 71-1,142, 71-1,147.03, 71-1,147.08, 71-1,147.39, 71-1,147.40, 71-1,147.48, 71-1,147.50, 71-1,147.51, 71-1,147.53 to 71-1,147.57, 71-1,147.59, 71-1536, 71-2023, 71-2024, 71-5403, 71-6721, and 71-7416, Revised Statutes Supplement, 1998, are repealed.

Sec. 340. The following sections are outright repealed: Sections 28-403, 28-419 to 28-424, 28-439, 28-1438, 28-1438.01,

71-1,144.02, 71-1,145.01, 71-1,146, 71-1,147.04, 71-1,147.05, 71-1,147.15 to 71-1,147.21, 71-1,147.27, 71-1,147.29, 71-1,147.37, 71-1,147.38, 71-1,147.47, 71-2401 to 71-2403, 71-2502 to 71-2505, 71-2507, 71-2508, 71-2510 to 71-2512, 71-5401, 71-5402, 71-5405 to 71-5407, 71-7402 to 71-7408, 71-7410, 71-7411, and 71-7413, Reissue Revised Statutes of Nebraska, and sections 28-401, 71-1,147.41 to 71-1,147.46, 71-1,147.49, 71-1,147.58, 71-1,147.60, 71-1,147.61, 71-5404, 71-7409, and 71-7418, Revised Statutes Supplement, 1998.